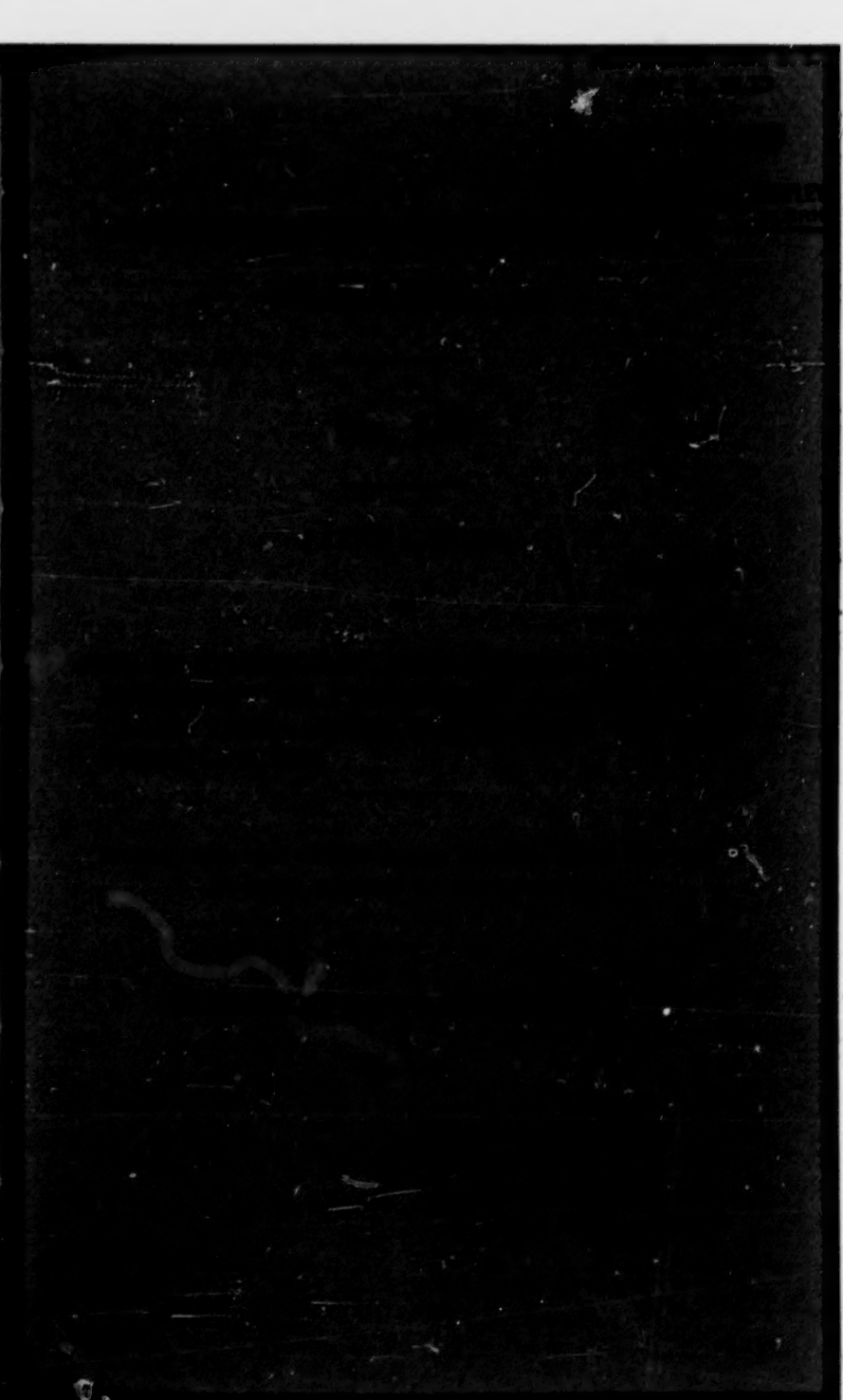

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 8,706

JAYNE L. BURT,

vs. *Plaintiff,*

CITY OF PITTSBURGH, A MUNICIPAL CORPORATION, URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH, A BODY PUBLIC, CORPORATE AND POLITIC, AND THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, A BUSINESS CORPORATION,

Defendants

JURISDICTIONAL STATEMENT

The Plaintiff-appellant, having presented this day her Petition for Appeal, now files this her statement of the basis upon which she contends that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final Order in question entered in the above captioned cause, and should exercise such jurisdiction in this case.

A. The Statutory Provision Believed to Sustain the Jurisdiction

This Appeal is prosecuted from a final Order of a District Court of the United States, convened specially as a

"three-judge Court" under the provisions of Title 28 U. S. C. A. 2281, which dismissed Plaintiff's Complaint and denied Plaintiff either a temporary restraining Order or an interlocutory injunction for any of the reasons set forth in the allegations and prayers of said Complaint. Plaintiff in her Complaint had sought federal judicial review of the conduct and findings of the City Planning Commission of the City of Pittsburgh in certifying an area in said City, including Plaintiff's property, as "blighted" under the provisions of the Urban Redevelopment Law of the Commonwealth of Pennsylvania; had sought to have the federal constitutionality of said legislation determined; had sought to have the federal constitutionality of the administration of said legislation by Defendants and their agencies determined; and, had sought both a temporary restraining Order, pending hearing on the merits of the allegations of Plaintiff's Complaint, and an interlocutory injunction against Defendants to prevent them from taking Plaintiff's property under the powers of eminent domain as granted in said legislation. Plaintiff alleges in her Complaint that the acts of the Defendants, principally that of the City Planning Commission above mentioned, were arbitrary, capricious and without basis in fact or law.

The final Order, here appealed from, dismissing Plaintiff's Complaint, thereby denying Plaintiff's request for a temporary restraining Order and interlocutory injunction, was entered in the District Court of the United States for the Western District of Pennsylvania, on April 25, 1950, by a statutory Court consisting of one Circuit and two District Judges specially convoked under and by virtue of the provisions of Section 2284 of Title 28 U. S. C. A. The dismissal of Plaintiff's Complaint by said Court was *not* based upon any ground of or finding of lack of jurisdiction

of such Court over the subject matter of the issues raised in Plaintiff's Complaint under Sections 2281 *et seq.* of Title 28 U. S. C. A.

The statutes providing for appeals in the instant case are as follows:

a. Section 1253 Title 28 U. S. C. A., judicial code:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any action of Congress to be heard and determined by a district court of three judges."

b. Section 2281 Title 28 U. S. C. A., judicial code:

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district Court of three judges under section 2284 of this title."

c. Section 2101 (b) Title 28 U. S. C. A., judicial code:

> "Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment order or decree, appealed from, if interlocutory, and within sixty days if final."

Plaintiff-appellant contends that under the express wording of the Urban Redevelopment Law of Pennsylvania, Act

of 1945, May 24, P. L. 991 #4(a), the Defendant, Urban Redevelopment Authority of Pittsburgh, which was created and which exists by virtue of the provisions of said legislation, is an administrative board or commission acting under state statute exercising a state function within the meaning of Section 2281, Title 28, U. S. C. A., judicial code. Such express wording is:

> "There are hereby created separate and distinct bodies corporate and politic—as herein defined. Each such body shall be known as the Redevelopment Authority of the city or the county, as the case may be, but shall in no way be deemed to be an instrumentality of such city or county, or engaged in the performance of a municipal function. * * *" (Pennsylvania Act of Assembly 1945, May 24, P. L. #4(a)).

Plaintiff-appellant further contends that in so far as the City Planning Commission of the Defendant, City of Pittsburgh, is concerned, its action in certifying the property, including Plaintiff-appellant's, described in the Complaint as "blighted" was an action taken under and solely by virtue of the provisions of said legislation, more particularly:

> "An authority shall prepare a redevelopment proposal for any area certified by the planning commission to be a redevelopment area * * *." (Pennsylvania Act of Assembly 1945, May 24, P. L. 991 #10(a)).

and was, in effect, the act of a state administrative body exercising a state function, as distinguished from such commission's ordinary municipal function.

Plaintiff respectfully contends that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final order in question by virtue of the express statutory provisions hereinabove set forth.

B. The State Statute and Administrative Orders Which Are Involved

The Plaintiff-appellant contends:

a. That the Pennsylvania Act of Assembly 1945 Pamphlet Laws 991 #1-#19, popularly known as the Urban Redevelopment Law, is unconstitutional for the reason that it is violative of the Fourteenth Amendment of the Constitution of the United States, in so far as it operates to take private property, in this case the private property of Plaintiff-appellant, for a private use and not a public purpose or use.

b. That the area certified, under the terms of the above legislation, by the Planning Commission of the Defendant, City of Pittsburgh, is not "blighted" within the definition of such an area (under Section 2(a) of said legislation) in that Plaintiff's property in said area and said area is not:

1. unsafe.
2. unsanitary.
3. inadequate.
4. overcrowded as to dwellings therein.
5. in an inadequately planned area.
6. in an area having excessive land coverage by the buildings.
7. in an area having lack of proper light and air and open space.
8. in an area having defectively designed and arranged buildings.
9. in an area having a faulty street or lot layout.
10. in an area, including Plaintiff-appellant's property, being put to an economically or socially undesirable land use,

and that said Planning Commission's certification of "blight" based upon Nos. 5, 6, 9 and 10, as immediately set forth above, was and is arbitrary, capricious and without basis in fact and law and, as such, constitutes deprivation of due process to Plaintiff-appellant under the Fourteenth Amendment of the Constitution of the United States.

c. That the acts of the Defendant, Urban Redevelopment Authority of the City of Pittsburgh, itself, and acting by contract with the Defendant, the Equitable Life Assurance Society of the United States, taken pursuant to the provisions of the said Urban Redevelopment Law of Pennsylvania based, as they are:

1. upon an act which permits the taking of private property for other than a public use or purpose.

2. upon a certification under said Act, by a Planning Commission, which certification is arbitrary, capricious and without basis in fact or law.

3. on not providing for the removal of purported uses, found to cause "blight" under said Act.

4. on providing for discrimination between properties now in said areas devoted to similar uses by exempting some and not others

are all violative of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

d. That the denial to Plaintiff-appellant of any right to have a judicial review of the question of whether or not the proposed and threatened taking of her property is for a public use and purpose; the denial to permit her to produce evidence to support the allegations, which are under this proceeding of Defendant's Motion to Dismiss admitted, that the action of the Planning Commission is arbitrary and

capricious and without basis in fact or law, and that the actions of the Urban Redevelopment Authority and Equitable Life Assurance Society are not within the provisions of the Urban Redevelopment Law and are in fact violative of due process and discriminatory constitute a denial to Plaintiff-appellant of her rights under the Fourteenth Amendment to the Constitution of the United States.

e. That to permit any City Planning Commission, under the Urban Redevelopment Law, to certify Plaintiff's property as "blighted" and to cause it to be condemned and taken by permitting such commission to ascertain what is inadequate planning; what is excessive land coverage; what is faulty street or lot layout and what is an economically or socially undesirable land use constitutes an unauthorized and unconstitutional delegation of legislative authority and power and is a deprivation of due process under the Fourteenth Amendment of the Constitution of the United States.

C. The Date of the Order Sought to Be Reviewed, and the Date upon Which the Application for Appeal Was Presented.

The final order here sought to be reviewed was entered and spread of record on April 25, A. D. 1950.

The Petition for Appeal herein was presented and filed on May 24, A. D. 1950.

D. The Nature of This Case and the Ruling of the Court Are Such as to Bring This Case Within the Jurisdictional Provisions Relied upon.

Based upon a purported factual situation, existing on March 25, 1947, the City Planning Commission of Defendant, City of Pittsburgh, certified an area consisting of 23 acres in the "heart" of the so-called "Golden Triangle" section of said City to be "blighted" under the terms of

the aforementioned Urban Redevelopment Law of Pennsylvania. This legislation was enacted May 24, 1945 and the declaration of legislative policy may be found in Section 2 of the Act, cited below as Note 1. Essentially this legislation constitutes a broad step forward in the field of eminent domain for it calls into exercise this powerful arm of government in order to assist private enterprise, in

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[1] "It is hereby determined and declared as a matter of legislative finding:

(a) That there exist in urban communities in this Commonwealth areas which have become blighted because of the unsafe, unsanitary, inadequate or over-crowded condition of the dwellings therein, or because of inadequate planning of the area, or excessive land coverage by the buildings thereon, or the lack of proper light and air and open space, or because of the defective design and arrangement of the buildings thereon, or faulty street or lot layout, or economically or socially undesirable land uses.

(b) That such conditions or a combination of some or all of them have and will continue to result in making such areas economic or social liabilities, harmful to the social and economic well-being of the entire communities in which they exist, depreciating values therein, reducing tax revenues, and thereby depreciating further the general community-wide values.

(c) That the foregoing conditions are beyond remedy or control by regulatory processes and cannot be effectively dealt with by private enterprise under existing law without the additional aids herein granted, and that such conditions exist chiefly in areas which are so subdivided into small parcels and in divided ownerships that their assembly for purpose of clearance, replanning and redevelopment is difficult and impossible without the effective public power of eminent domain.

(d) That the acquisition and sound replanning and redevelopment of such areas in accordance with sound and approved plans for their redevelopment will promote the public health, safety, convenience and welfare.

Therefore, it is hereby declared to be the policy of the Commonwealth of Pennsylvania to promote the health, safety and welfare of the inhabitants thereof by the creation of bodies corporate and politic to be known as Redevelopment Authorities, which shall exist and operate for the public purposes of acquiring and replanning such areas and of holding or disposing of them in such manner that they shall become available for economically and socially sound redevelopment. Such purposes are hereby declared to be public uses for which public money may be spent, and private property may be acquired by the exercise of the power of eminent domain. 1945, May 24, P. L. 991, par. 2."

commercial and industrial fields, to acquire land within the boundaries of Cities and Counties in the Commonwealth of Pennsylvania for such private enterprises' sole use and profit. Having declared this area "blighted", which area included Plaintiff-appellant's property, a two story brick commercial building situate on Penn Avenue in Pittsburgh, a redevelopment proposal was drafted. The redevelopment proposal is drafted by virtue of Section 10 of the Urban Redevelopment Law, which section is cited below in Note 2. Armed with the Redevelopment Proposal

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[2] "(a) An Authority shall prepare a redevelopment proposal for any area certified by the planning commission to be a redevelopment area and for which the planning commission has made a redevelopment area plan.

(b) The planning commission's certification of a redevelopment area shall be made in conformance with its comprehensive general plan (which may include, inter alia, a plan of major traffic arteries and terminals and a land use plan and projected population densities) for the territory under its jurisdiction.

(c) The planning commission's redevelopment area plan shall include, without being limited to, the following:

(1) The boundaries of the area, with a map showing the existing uses of the real property therein;

(2) A land use plan of the area showing proposed uses following redevelopment;

(3) Standards of population densities, land coverage and building intensities in the proposed redevelopment;

(4) A preliminary site plan of the area;

(5) A statement of the proposed changes, if any, in zoning ordinances or maps;

(6) A statement of any proposed changes in street layouts or street levels;

(7) A statement of the extent and effect of the rehousing of families which may be made necessary from the redevelopment area plan, and the manner in which such rehousing may be accomplished;

(8) A statement of the estimated cost of acquisition of the redevelopment area, and of all other costs necessary to prepare the area for redevelopment;

(9) A statement of such continuing controls as may be deemed necessary to effectuate the purposes of this act."

for this 23 acre tract, the Urban Redevelopment Authority of Pittsburgh procured tentative consent of the Defendant, Equitable Life Assurance Society of the United States to become the Redeveloper. The Redeveloper is defined in the mentioned legislation as

> "Any individual, partnership or public or private corporation that shall enter or propose to enter into a contract with an Authority for the redevelopment of an area under the provisions of this act."

On January 27, 1950, the redevelopment proposal, the certification of "Blight" and the proposed contract with the Redeveloper were approved by Resolution of the Council of the Defendant, City of Pittsburgh. Such approval is a legislative prerequisite to carrying into effect any of the redevelopment proposal (cf. Section 10 (i) of the Urban Redevelopment Law, hereinabove cited).

On February 14, 1950, Defendant, Urban Redevelopment Authority of Pittsburgh, and Defendant, Equitable Life Assurance Society of the United States, entered into a redevelopment contract which contract is attached as an exhibit to Plaintiff-appellant's Complaint, and is made part hereof by reference hereto. Under the terms of said contract, using only money of Defendant, Equitable, the Defendant, Authority, was obliged to acquire title to the 23 acre tract by eminent domain, if not otherwise, and immediately, at Equitable's request, give the title so acquired to Equitable. Thereafter Defendant, Equitable, as the sole owner of said property, and with the right to the use of said property exclusive of anyone else, and with the right to deny access to said property to any but its invitees, was obligated as to a small fraction of said 23 acres to erect three 18 story office buildings for its own use and private profit and to do certain other acts, at its own

pleasure, with reference to the remaining acreage taken by eminent domain.

On April 5, 1950, the same day that the first application for bond in eminent domain proceedings under Pennsylvania law was presented as to a part of said "blighted" area not Plaintiff-appellant's, Plaintiff-appellant presented her Complaint in the District Court of the Western District of Pennsylvania seeking a temporary restraining Order to prevent defendants from proceeding to take her property and seeking an interlocutory injunction, later to be made permanent, to prevent such seizure. After convoking a three-judge District Court, the case was heard upon Defendants' Motion to dismiss the Complaint on the ground that it did not state a cause for which relief could be granted. Immediately after oral argument, and without testimony, the specially convoked District Court dismissed the Complaint for the reasons that it was of the opinion that two previous cases of the Supreme Court of Pennsylvania dealing with this legislation precluded its review of the same and that the decision of the Supreme Court of the United States in *U. S. ex rel. T. V. A.* v. *Welch*, 327 U. S. 546 (1946) further precluded federal judicial review of the acts of the defendants.

E. It Is Contended That the Questions Involved in This Case Present Substantial Grounds Based upon Constitutional Rights for the United States Supreme Court to Consider.

The Supreme Court of the United States, regardless of its understandable reluctance to interfere in matters where it feels the State Legislatures' view of what is a public purpose within a State due to local conditions should be paramount and unquestioned, has not abdicated yet the century old position of the Federal Judiciary that, under

the Fourteenth Amendment of the Constitution of the United States, what is in fact a public use or purpose *is* in the last analysis a *judicial question* for the federal courts to determine under the facts of each case. Admittedly, the postulate of public use or public purpose has been broadened in recent years so that a host of cases appear in the reports both of federal and state courts upholding one or more forms of eminent domain takings because of a judicial finding that expressed legislative purposes were for a public use and purpose. In every such case, even in the case of *U. S. ex rel. T.V.A.* v. *Welch*, cited herein, embodied in the findings of fact or evident from an examination of the application of the questioned legislation to a particular property some generally admitted and accepted public purpose could be found. In the instant case, however, for the first time the proposition has been raised that land of one commercial or industrial user can be taken away from him and immediately, without more, given to his competitor for such competitor's sole use, benefit, enjoyment and profit; and, the fiction by which this is accomplished is to declare a public purpose to have been achieved by the removal of "blight" in the act of taking under eminent domain. Numerous states have in recent years passed "Urban Redevelopment Laws". In most of them, the fact situation of the property sought to be condemned must be such as to warrant even a taking under the police power without compensation. (cf. Note 3.) Not so the Urban Redevelopment

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[3] a. Col. Gen. Laws Act 1945 p. 2478 "—substandard and unsanitary area occasioned by—lack of proper sanitary facilities and existence of buildings which because of age, obsolescence of physical deterioration have become economic or social liabilities; that such conditions are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime—in inability to pay reasonable taxes

b. Georgia Code (Annot.) 99 No. 2201(a) Act of 1946 pp. 157, 158—blighted areas cause increase in spread of disease and crime and are a menace to health, safety, morals and welfare, necessitating excessive

Law of Pennsylvania with which this case is concerned. Under the terms of this legislation Plaintiff-appellant's land could be taken and given to another purely upon a finding that any two of the 10 numbered reasons set out earlier in this statement existed. With respect to this case Plaintiff-appellant's property, it is alleged, is being taken for the sole, exclusive private use of another which use need not, and will not be any different from the use to which Plaintiff-appellant is now devoting her property. It is submitted that this is calling into play the power of eminent domain for something other than a public use or purpose and that to

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and disproportionate expenditure of public funds for crime prevention and public health and safety, fire and accident protection

c. Illinois Law 1941 P. 431; Smith Hurd Ill. Annot. Stat. 32 No. 550.1—Disproportionate tax delinquency and consequent inadequacy of tax revenue to cost of state services rendered; exodus of populous; age, physical deterioration or obsolescence of buildings rendering them unfit for and unsafe for human use; prevalence of factors conducive to ill health, delinquency, crime; a slum area where major portion of housing is detrimental to health, safety and morals and welfare of occupants by reason of age, delapidation, overcrowding, lack of sanitary facilities—Sec. 550.17 No. 2(d) *provides for judicial review of determination of "blight"*

d. similarly, except for express provision for judicial review; are Kansas (Kan. Gen. Stat. Annot. (Carrick Suppl.) 1943 No. 17-4701 et seq.); Connecticut (Gen. Stat. of Conn. Rev. 1949 Vol. 1 No. 979 et seq.); Florida (Fla. Laws 1945 c. 23077; Fla. Stat. Annot. Vol. 14 No. 421.08) Kentucky (Ky. Rev. St. 1948 c. 99)

e. Maryland (Annot. Code of Md. 1947 Act of 1943 c. 664 based upon Art. XI B of Constitution—Blighted areas means an area in which a majority of the buildings have declined in productivity by reason of obsolescence, depreciation—to an extent they no longer justify fundamental repairs and adequate maintenance

f. Mass. (Annot. Laws of Mass. Vol. 4 c. 121A (1948 Supp.))—Decadent area where many of buildings are out of repair, physically deteriorated or obsolete or to a large extent vacant or in which much of the real estate has in recent years been sold or taken for non payment of taxes or foreclosure of mortgages or torn down and not replaced and improbable of replacement—so that there is a large body of land substantially useless in its existing condition.

g. Ohio (Baldwins 1949 Ohio Code No. 3941 et seq.)—area in which a majority of structures is detrimental to public health, safety or welfare by reason of age, delapidation, overcrowding, lack of ventilation or

uphold such taking means in effect the collapse of the concept of the right of an individual to enjoy peaceful possession of his property. For no property in Pennsylvania is today safe from a declaration of "blight" under the illusory terms of the statute complained of herein and a consequent taking and conveying of it to another for such other's private use, benefit and profit. The Supreme Court of the United States has not had an opportunity to examine judicially the concept of taking under any so-called redevelopment law of any State. It being of important interest and scope not only state-wide in Pennsylvania, but in

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sanitary facilities and detrimental to public health—by failing to conform to ordinances regarding safety, health and sanitation.

h. South Carolina (Act of 1946 No. 531 p. 1450)—cause increase in disease and crime, menaces public health, safety, morals and welfare, excessive payment of government funds for crime prevention, fire protection and public services.

i. Rhode Island (Comm. Redev. Act of 1946 Cap. 1802, Art. I et seq.)—buildings which by reason of — overcrowding, inadequate light, ventilation and open space, obsolescence, deterioration, delapidation are unfit for or unsafe for human habitation and are conducive to ill health, disease, infant mortality, juvenile delinquency and crime, economic deterioration or disuse, impaired ability to pay taxes and thus disproportionate municipal services.

Virginia (Urban Redev. Corp. Act Ch. 190 Acts 1946; Code of Va. (1950) No. 15-914 and No. 36-48 et seq.)—blighted areas defined as areas (including slum areas) with buildings which by reason of dilapidation, obsolescence, overcrowding—lack of ventilation, light and sanitary facilities and deleterious land uses are detrimental to health, safety, morals and welfare in which spread of disease, crime and etc. menaces public health and safety.

j. other acts similar to those above cited: Minnesota (Minn. Laws 1947 Ch. 487); Missouri (Mo. Stat. 7875.44 (Supp. 1948)); New York (Uncon. Laws—3301 (1942)) N.B. Governor Dewey's message in support repeatedly referred to it as a "slum clearance measure"; Tennessee (Williams Tenn. Code Vol. 3 No. 3647.52; Act of 1945 Ch. 114); Wisconsin (Wis. Stat. 1945 66.405 et seq.);

k. to the effect that such conditions warrant exercise of police power rather than eminent domain with compensation note acceptance of that theory by West Virginia's legislature (1949 Code No. 494 (1-5)) authorizing ordinances to regulate repair, closing, or demolition of buildings which are unsafe, unsanitary, dangerous or detrimental to public welfare.

her sister States as well, it is submitted that the question of public use under the Fourteenth Amendment as raised in Plaintiff-appellant's Complaint is substantial.

Apart from the abstract question of "Public use or purpose" of the Urban Redevelopment Law of Pennsylvania are Plaintiff-appellant's allegations in her Complaint that said Act is being exercised by the Defendants in an unconstitutional manner. She has averred, and by their Motion to Dismiss Defendants have admitted, that the action of the Defendant, City Planning Commission, in certifying the area, including her property, "blighted", under said Urban Redevelopment Law, was arbitrary, capricious and without basis in fact or law; similarly, she has averred that the Defendants, Urban Redevelopment Authority of Pittsburgh, and Equitable Life Assurance Society of the United States are proposing, through their contract, to act in a discriminatory manner with reference to individual property owners in the area by taking certain properties and exempting others and by permitting Equitable to continue, as to a majority of the area to be taken, the same uses in the area which now are being conducted by the owners thereof; and by taking property in the area under eminent domain, under the fiction of removing "blight", and yet not undertaking to remove such purported "blight" or to obligate Defendant, Redeveloper, The Equitable Life Assurance Society of the United States, to remove any purported "blight". In short, she has averred that the area is not "blighted" under the definitions of the law under which Defendants seek to act and has asked only for an opportunity to prove her averments by competent testimony. It cannot be denied that if the certification of "blight" in the instant case is arbitrary and capricious and without basis in fact or law, or if the acts of the other Defendants are as averred, then the proposed and threat-

ened taking of Plaintiff-appellant's land is a violation of her rights under the Fourteenth Amendment of the Constitution of the United States and thus the question raised is substantial.

The specially convoked District Court has by its decision indicated that, so far as the Third Circuit of the Federal Judiciary is concerned, the decision of the United States Supreme Court in *U. S. ex rel. T.V.A.* v. *Welch*, 327 U. S. 546 (1946) immunizes administrative, or quasi-legislative bodies (State or Federal) from judicial review. A reading of Mr. Justice Reed's concurring opinion, in which the Chief Justice joined, and of Mr. Justice Frankfurter's concurring opinion has convinced Plaintiff-appellant that such was not the import of the majority opinion in said case. It is submitted that in a properly pleaded case, as in the instant case, the Supreme Court will reaffirm the function of the judiciary to review asserted unconstitutional acts of such "bodies" and that the opportunity to amplify the "Welch" opinion afforded by this appeal is, under the facts revealed in the Complaint, of itself, a substantial question.

F. General Discussion of Law Applicable to Issues Raised in This Statement

1. The challenge that the Urban Redevelopment Law of Pennsylvania violates the due process clause of the Fourteenth Amendment of the Constitution of the United States.

The concept of the expanding doctrine of public use or purpose has been accepted by the Courts, not by reason of any weakening of the principle that private property cannot be taken for a private use even when compensation is paid, but rather through the greater need for the Courts, in interpreting legislation, to recognize the greater right

of the people or the community to protect, remedy or foster urgent natural or civic rights without the protection of which, or without the remedying or fostering of which, the people and the whole community would suffer. That is to say that progress, where necessary to preserve or foster the natural resources of a State; where required to abolish intolerable conditions of slums or depravity of housing; where called upon to protect some right, even in an individual, without which an entire economy of a community would collapse, cannot be barred, or prevented by the Courts by narrowly defining the concept of public purpose. Thus it is that the cases are legion, where, *while asserting the principle that private property must be taken for a public and not a private purpose,* the particular taking challenged was upheld. These are cases where the accident of geography and topography of our western States demanded irrigation rights over another's land, the prevention of which would have stifled agricultural development of the West: (*Fallbrook Irrigation District* v. *Bradley,* 164 U. S. 112, 1896) (*Clark* v. *Nash,* 198 U. S. 361, 1905); where rights over another's land were vitally essential to the development of the mineral resources of our country: (*Strickley* v. *Highland Boy Gold Mining Co.,* 200 U. S. 527, 1906); its railroad and transportation system; (*Hairston* v. *Danville & Western Railway,* 208 U. S. 598, 1908); so that its citizens could have access to water supply; (*Joslin Co.* v. *Providence,* 262 U. S. 668, 1923); or to afford vital recreational facilities to its people so that the overall general welfare and morale would be sustained; (*Rindge Co.* v. *Los Angeles,* 262 U. S. 700, 1923); or a natural extension of the great need for the United States to develop power resources in war and for protection in case of future war: (*U. S. ex rel. T.V.A.* v. *Welch,* 327 U. S. 546, 1946); or where, if eminent domain was not exercised,

the whole economy of an island Territory of the United States would collapse, with resultant destitution for all its citizens: (*People of Puerto Rico* v. *Eastern Sugar Association*, 156 Fed. 2d 316, 1st Circuit 1946); or where the need of thousands of ill-housed families for decent living conditions required the use of eminent domain to obtain space to build same: (*Redfern* v. *Bd. of Com'rs. of Jersey City*, 59 Atl. 2d 641, 1948) (*Matter of Murray* v. *LaGuardia*, 291 N. Y. 320, 1943).

Typical of the attitude of the Federal Judiciary in such cases, and Plaintiff-appellant asserts the correct attitude, is set forth in *United States* v. *Boyle*, 52 Fed. Supp. 906 (N. D. Ohio 1943) where the Court considered it well within a public purpose concept to provide for slum clearance and to remove the unsanitary, unhealthful conditions, the filth and overcrowding of tenements, to overcome the decay and disease and delinquencies prevalent in such areas of our cities. Even in the only State Appellate Court decision on a "Redevelopment Statute" other than Pennsylvania, (namely *Zurn* v. *City of Chicago*, 59 N.E. 2d 18, Ill. 1945) it was found that actual removal of juvenile delinquency, disease, conditions conducive to crime and poverty and lack of safety condemned by the Neighborhood Redevelopment Law of Illinois was indeed a public purpose.

Nevertheless, the same cases, without exception, state in unequivocal language that private property cannot be taken for private purposes. It follows, without doubt, that where a purpose is found to be private the taking would be restrained as unconstitutional. It further follows that what is a public purpose in any case depends upon the facts of each case and is a judicial question for ultimate judicial and not legislative determination.

There is no situation, such as were considered in the above cases, present as to the 23 acres of land Defendants

seek to condemn, or with respect to Plaintiff-appellant's portion of said acreage. There is no finding that this area is unsafe; unsanitary; conducive to disease, ill-health; contributory to juvenile delinquency; capable of fostering crime; so dilapidated that the municipal services of fire and police protection far exceed the value of the tax return from it; overcrowded; lacking in proper air, light and open space. There is no finding that it is a "slum" or similar type of area such as are generally recognized by prudent citizens in urban areas. There is no finding that the economy of the City of Pittsburgh is in danger in any manner due to the existence of this district. There is no finding that the social conditions, if any, which exist in this district are immoral, sub-standard or by any measurement perilous to that of the community generally. There is only a finding that the area is inadequately planned; has excessive land coverage; has a faulty street and lot layout; and, is being put to an economically undesirable use.

Plaintiff-appellant contends that if on such findings the Urban Redevelopment Law of Pennsylvania authorizes her land to be taken for the private use of another, which use is to be similar (though on a grander scale) to the use she now enjoys, said law is in violation of the Fourteenth Amendment of the Constitution of the United States:

a. Because it is a taking of private property for other than a public use or purpose.

b. Because it permits an unelected administrative body to make findings of a jurisdictional nature based upon illusory, inadequate and speculative definitions and is the result of an unconstitutional delegation of legislative authority.

2. The acts of the Defendant, City of Pittsburgh's City Planning Commission in certifying as "blighted" Plaintiff-appellant's land; and the acts of Defendants, Urban Redevelopment Authority of Pittsburgh, and

The Equitable Life Assurance Society of the United States, in discriminating against property owners in the area by exempting some and not others from condemnation; and, in not providing for the removal of purported "blight" in most of the area; and, in permitting the continuance in a major portion of the area of uses to which the area is now being put; are all arbitrary, capricious and without basis in fact or law and, as such, constitute an unconstitutional administration of the Urban Redevelopment Law of Pennsylvania, and deprive Plaintiff-appellant of due process and equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States.

Admittedly, if a City Planning Commission failed to follow the dictates of the Urban Redevelopment Law of Pennsylvania by making an arbitrary and capricious finding of the existence of two or more of the conditions required to be found by said Act in certifying an area "blighted" its conduct would be violative of the Federal Constitution. Admittedly, if the acts of the other Defendants outlined at 2. above were committed, they would violate that Constitution. This is exactly what Plaintiff-appellant avers in her Complaint, which has been dismissed, not so much because she was not thought to have a right to prove her averments, but because of a mistaken conception of the scope of the two Pennsylvania Supreme Court decisions on this Law, as well as the limiting effect of the *U. S. ex rel. T.V.A.* v. *Welch* case, *supra*. The important thing to note is that at this stage of the pleadings the allegations that Plaintiff-appellant's property is not "blighted" under the Urban Redevelopment Law of Pennsylvania, and of the arbitrary and capricious conduct of the Defendants thereunder, stand unchallenged and admitted.

Both decisions of the Pennsylvania Supreme Court involving this legislation were test cases and only decided,

if at all, the State constitutionality of the Act. The first decision was:

Belovsky v. *Redevelopment Authority of the City of Philadelphia,* 357 Pa. 329 (1947).

In that case nothing had been done towards taking anyone's land or property. The City of Philadelphia merely proposed to create a Redevelopment Authority and a taxpayer's bill to prevent such creation and diversion of funds to it was sought. The Court upheld the Act as providing for a taking for a public purpose by reason of the "removal of blight" if found to exist. The removal was therefor the public purpose. It was recognized that slum clearance was the nature of the Act and in its broad application it certainly was intended to achieve a constitutional and public purpose. The Court further held the definitions of "blight" in the Act not to constitute an unlawful delegation of legislative authority, although a dissenting opinion on that point was rendered. That the warning regarding the loose language in the Act on the definition of "blight" was not without merit is apparent when the facts of Plaintiff-appellant's case are considered. Indeed it is just the danger the dissenting jurist feared would happen. The second decision was:

Schenck v. *Pittsburgh, et al.,* 364 Pa. 31, (1950).

In that case the constitutionality of the Act under Pennsylvania's Constitution was upheld as to the very area in which Plaintiff-appellant's property is located. This case was admittedly an arranged case. The Plaintiff was the uncle of one of counsel for Defendant, Equitable Life Assurance Society of the United States; the Bill and Answer were filed the same day, December 12, 1950; seven days later, December 19, 1950, on *Plaintiff's* application and on

his averment that if not heard by the Supreme Court the project would fail (the very project he was supposedly contesting violated his constitutional rights), original jurisdiction was granted by the Supreme Court; the case was argued, in Philadelphia, Pennsylvania, January 5, 1950; the case was argued without a word of testimony, without a document or picture truly reflecting the character or condition of the area; it was argued with no challenge to the Federal Constitutionality of the Law, and, it was argued with no challenge to the act of any administrative agency concerned, particularly with no challenge to the City Planning Commission's certification of "blight." Expediency alone governed the conduct of the parties to that litigation, brought at the insistence of Defendant, Equitable Life Assurance Society of the United States in order to "rubber-stamp" the legality of its acquisition of the area for its own use and profit. Even so, the learned justice writing the opinion, Mr. Justice Stern, said:

> "—in the absence of any indication that the Commission (City Planning Commission) did not act in good faith or was wholly arbitrary in certifying the area designated by it as blighted, its certification to that effect is not subject to judicial review."

In the absence of any challenge, in the pleadings or in the briefs or arguments of friendly counsel, or arbitrariness or capriciousness, Mr. Justice Stern very properly so held, indeed he hardly could have done otherwise. Plaintiff-appellant's Complaint raises not only the federal questions not considered by either Supreme Court decision, but also, properly questions the legal propriety of the arbitrary and capricious acts of the Defendants, so that the questions sought to be litigated herein are wholly distinct and separate from any heretofore considered by the Pennsylvania Supreme Court.

G. Cases Believed to Sustain the Jurisdiction

The following are a few of the cases believed to warrant jurisdiction of the issues raised in Plaintiff-appellant's Complaint:

1. Right to inquire independently into public purpose of state legislation

Dalche v. *Bd. of Com'rs. of Orleans*, 49 Fed. 2d 374;
Rindge Co. v. *Los Angeles County*, 262 U. S. 700;
Milheim et al v. *Moffat Tunnel Imp. Dist.*, 262 U. S. 710;
Missouri Pacific Railway Co. v. *Nebraska*, 164 U. S. 417;
Cincinnati v. *Vester*, 281 U. S. 439.

2. Right to inquire into constitutionality of administration of state legislation, of itself constitutional

Oklahoma Gas Co. v. *Russell*, 261 U. S. 293;
Ex Parte Young, 209 U. S. 123.

3. Though apparently of local municipal concern, geographically, the defendants are acting in a matter of Statewide policy and concern on the enforcement of a State policy of grave and substantial import and are thus not local or municipal but Statewide officers or agents

Urban Redevelopment Law of Pennsylvania Act of 1945, May 24, P.L. 991 #4(a);
Spielman Motor Sales Co. v. *Dodge*, 295 U. S. 89.

Conclusion

Plaintiff-appellant feels it necessary to allude to certain background matter concerning this case which has highly colored its progress. The Equitable Life Assurance Society of the United States, the private Redeveloper, the Defendant standing to gain most from this condemnation, has been insistent from the beginning that, not only must its position be sustained legally, a proper position to assert, but that

any delay in the proceeding or the "throwing" open of this case to the taking of testimony to examine the bona fides of the proceedings, will cause it to withdraw from the project, an improper position to assert. Far from inviting legitimate inquiry into their acts, Defendants have stifled it at every step.

The envisioning of improvement of the historic "Point" at Pittsburgh has been a matter of civic aim and civic pride in Pittsburgh for generations. Apart from the Urban Redevelopment Law and independently of it, the Commonwealth of Pennsylvania by voluntary negotiation with the owners has obtained title to the area for the "Point Park", being 36 acres west of the tract concerned in this litigation. Already the Commonwealth is proceeding to establish that great monument to American History. The 23 acres involved in this litigation adjoins the new Park to the East and lies between the Allegheny and Monongahela Rivers and consist of nine city blocks. It presently gives employment to hundreds of persons; it has hotels, parking lots, (indoor and outdoor), schools, civic group headquarters, such as the Congress of Womens Clubs, restaurants, offices of the Commonwealth of Pennsylvania, several minor skyscrapers, including many modern buildings, one devoted to physicians' offices, many legitimate commercial ventures, the headquarters of the City's largest newspaper and many other firms. Its present market value is measured in terms of tens of millions of dollars. The annual dollar volume of business in this purportedly "blighted" area runs into millions. It is bounded by newly laid urban highways abutting the rivers and is interspersed with broad streets, three of which being the main downtown traffic arteries (Boulevard of Allies, Liberty Avenue and Penn Avenue). Recently a 100 x 120 foot part of this "blighted" land was sold to one of Pittsburgh's largest department stores for

almost a million dollars. It is in no sense a "blighted" or "slum" area or the kind of area the Legislature of Pennsylvania had in mind in enacting the Urban Redevelopment Law. Solely, because the Equitable Life Assurance Society intends to build larger buildings which would bring greater tax revenue from a small portion of the area, Defendants propose to condemn the land, demolish the buildings and force the removal of these legitimate businesses from the area: all without the suggestion of a legitimate hearing and with every possible effort made to suppress the admission of any real evidence from the property owners whose lands are sought to be condemned.

Finally, it is appropriate to point out that although every land owner in the "Point Park" area voluntarily negotiated with the Commonwealth of Pennsylvania, not one property owner has yielded voluntarily his land to Defendants in the area concerned in this litigation. Plaintiff-appellant's Complaint is not the isolated protest of a lone property owner, rather it voices the basic beliefs of the great majority of them.

By assiduous propaganda disseminated to an unsuspecting and gullible public, the Defendants, or some of them, have attempted to label the proposed taking as a significant advancement in civic progress as an integral part of the "Point Park" project. The plain fact is that if this property is "blighted", then no part of Pittsburgh's famed "Golden Triangle" is secure from such a venture and, without judicial review, even in a properly pleaded case, no citizen aggrieved could complain. It is Plaintiff-appellant's position that progress, if progress it be, is poorly bought if the price is the abandonment of accepted and guaranteed constitutional rights. The Supreme Court of Massachusetts once characterized a "taking" similar to this as unconstitutional and recently had an opportunity

to describe such "taking" again, in arriving at its decision on that State's housing legislation (*Allydonn Realty Corp.* v. *Holyoke Housing Authority*, 23 N.E. 2d, 665.) The Court, in distinguishing the earlier case (Opinion of the Judges, 98 N.E. 611) when cited to it in the argument, said:

> that case dealt with a *"purely commercial venture."*

Plaintiff-appellant contends that such characterization aptly fits the facts in the instant case.

The Court below delivered a hastily written Opinion, filed within 3 hours after conclusion of arguments, a copy of which is attached hereto as Appendix "A" to this jurisdictional statement.

Respectfully submitted,

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M. J. ARND,
JAMES A. DANAHEY,
Attorneys for Plaintiff-Appellant.

APPENDIX "A"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. 8706 Civil Action

JAYNE L. BURT, *Plaintiff*,

vs.

CITY OF PITTSBURGH, a Municipal Corporation, URBAN REDEVELOPMENT AUTHERITY OF PITTSBURGH, a body public, corporate and politic, and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a business corporation, *Defendants*

Before Goodrich, Circuit Judge, and Gourley and Burns, District Judges.

Per CURIAM:

This case is before a three-judge court summoned pursuant to 28 U. S. C. A. #2281. The plaintiff seeks to enjoin the defendants from proceeding with a plan heretofore approved for the development of an area in the City of Pittsburgh. Plaintiff attacks the constitutionality of the proceedings; hence the three-judge court. The statutes under which the Redevelopment project proceeds were before the Supreme Court of Pennsylvania in Shenck *v.* The City of Pittsburgh, 364 Pa. 31 (1950) and Belovsky *v.* Redevelopment Authority of the City of Philadelphia, et al., 357 Pa. 329, 54 A. 2nd 277 (1947). We think that all questions having to do with the constitutionality of the statutes under Pennsylvania law are determined by those decisions. During the past week the Court of Common Pleas of Allegheny County in Duffs Iron City College *v.* City of Pittsburgh, et al., has dismissed a bill similar to the one before us.

We are unanimously of the conclusion that the motion to dismiss should be granted. We do not find in the plaintiff's complaint and the exhibits attached thereto anything to indicate that the statutes themselves or the action of the constituted authorities in carrying them out violated the plaintiff's constitutional rights under the Constitution of the United States. We are reinforced in our conclusion that the City improvement project is not a matter into which the federal courts should rush lightly when we consider the words of the Supreme Court in U. S. ex. rel. TVA *v.* Welch, 327 U.S. 546 (1946).

The motion to dismiss is granted, with costs.

(S.) Herbert F. Goodrich,
Circuit Judge;
Wallace S. Gourley, *D. J.*,
Owen M. Burns, *D. J.*

April 25, 1950.

Office-Supreme Court, U. S.
FILED
JUN 28 1950
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 157

JAYNE L. BURT,

v. *Appellant,*

CITY OF PITTSBURGH, a MUNICIPAL CORPORATION, URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH, a BODY PUBLIC, CORPORATE and POLITIC, and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a BUSINESS CORPORATION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOTION TO AFFIRM

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The Equitable Life Assurance
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 157

JAYNE L. BURT,

v. *Appellant,*

CITY OF PITTSBURGH, a MUNICIPAL CORPORATION, URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH, a BODY PUBLIC, CORPORATE and POLITIC, and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, A BUSINESS CORPORATION

MOTION TO AFFIRM

To the Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

Pursuant to the Rules of the Supreme Court of the United States, defendants move to affirm the order of the three-judge District Court appealed from, on the grounds that the questions on which decision of the cause depends are so unsubstantial as not to need further argument.

The Proceedings, Order and Opinion Below

The complaint sought to restrain and enjoin the proposed condemnation of plaintiff's land on grounds of the alleged unconstitutionality under the Constitution of the

United States of the Pennsylvania Statute granting defendant, Urban Redevelopment Authority of Pittsburgh, the power of eminent domain, and of proceedings taken thereunder by defendants. Defendants moved, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, to dismiss the complaint for failure to state a claim upon which relief could be granted.

In accordance with 28 U. S. C. §§ 2281, 2284, the motion was heard before a specially convoked District Court of one Circuit and two District judges. The Court, after argument, entered an order granting defendants' motion and dismissing the complaint.

In its unanimous opinion the Court held that

> "we do not find in the plaintiff's complaint and the exhibits attached thereto anything to indicate that the statutes themselves or the action of the constituted authorities in carrying them out violated the plaintiff's constitutional rights under the constitution of the United States."

The opinion, filed on April 25, 1950, is not yet reported. The full text of the opinion, which includes the order, is attached as Appendix A hereto.

Jurisdiction of This Court

The order below, dismissing the complaint and thereby denying plaintiff the injunctive relief sought, was made by a District Court of three judges as required by 28 U. S. C. §§ 2281, 2284. This direct appeal from such order was taken by virtue of 28 U. S. C. §§ 1253, 2101(b).

Statement of the Matter Involved

1. *The Pennsylvania Statute Attacked.*

By act of the General Assembly of May 24, 1945, known as the Urban Redevelopment Law (P.L. 991, Purdon Pa.

Stat. Ann., Tit. 35, § 1701, *et seq.*), it was "determined and declared as a matter of legislative finding":

"(a) That there exist in urban communities in this Commonwealth areas which have become blighted because of the unsafe, unsanitary, inadequate or overcrowded condition of the dwellings therein, or because of inadequate planning of the area, or excessive land coverage by the buildings thereon, or the lack of proper light and air and open space, or because of the defective design and arrangement of the buildings thereon, or faulty street or lot layout, or economically or socially undesirable land uses.

"(b) That such conditions or a combination of some or all of them have and will continue to result in making such areas economic or social liabilities, harmful to the social and economic well-being of the entire communities in which they exist, depreciating values therein, reducing tax revenues, and thereby depreciating further the general community-wide values.

"(c) That the foregoing conditions are beyond remedy or control by regulatory processes and cannot be effectively dealt with by private enterprise under existing law without the additional aids herein granted, and that such conditions exist chiefly in areas which are so subdivided into small parcels and in divided ownerships that their assembly for purposes of clearance, replanning and redevelopment is difficult and impossible without the effective public power of eminent domain.

"(d) That the acquisition and sound replanning and redevelopment of such areas in accordance with sound and approved plans for their redevelopment will promote the public health, safety, convenience and welfare.

"Therefore, it is hereby declared to be the policy of the Commonwealth of Pennsylvania to promote the health, safety and welfare of the inhabitants thereof by the creation of bodies corporate and politic to be known as Redevelopment Authorities, which shall exist and operate for the public purposes of acquiring and

replanning such areas and of holding or disposing of them in such manner that they shall become available for economically and socially sound redevelopment. Such purposes are hereby declared to be public uses for which public money may be spent, and private property may be acquired by the exercise of the power of eminent domain."

The Law created Redevelopment Authorities for cities and counties of the Commonwealth and provided that an Authority "shall in no way be deemed to be an instrumentality of such city or county, or engaged in the performance of a municipal function." The Law further provided that an Authority "shall constitute a public body, corporate and politic, exercising public powers of the Commonwealth as an agency thereof."

The powers granted an Authority include the following:

"(i) To acquire by eminent domain any real property, including improvements and fixtures for the public purposes set forth in this act in the manner hereinafter provided: * * *

"(k) To sell, lease or otherwise transfer, subject to approval by the local governing body, any redevelopment area, either as an entirety to a single redeveloper or in parts to several redevelopers: * * *"

A "Redevelopment Area" is defined as: "any area, whether improved or unimproved, which a (municipal) planning commission may find to be blighted because of the existence of the conditions enumerated in section two of this Act so as to require redevelopment under the provisions of this act."

"Redevelopment" is defined as: "The acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational, commercial, industrial or other purposes, including the provision of streets, parks, recreational areas and other open spaces."

A "Redeveloper" is defined as: "Any individual, partnership or public or private corporation that shall enter or propose to enter into a contract with an Authority for the redevelopment of an area under the provisions of this act."

The procedure established by the Law for redevelopment of a blighted area is as follows: The city or county Planning Commission certifies a Redevelopment Area, which it finds to be blighted because of the existence of conditions enumerated in the Law, and prepares a Redevelopment Area Plan for such Area. The plan is required to set forth the boundaries of the Area, a land-use plan of the Area, information concerning its buildings and population, a statement of the existing uses of the real property therein, a statement of the proposed uses following Redevelopment, a statement of the proposed changes in zoning ordinances and street outlays, an estimate of costs, and a statement of such continuing controls as may be deemed necessary to accomplish the purposes of the Act.

The Authority then prepares a Redevelopment Proposal for the Redevelopment of all or part of such Area, including a proposed Redevelopment Contract with the Redeveloper selected, and submits the Proposal to the Planning Commission for review. The Proposal and Contract, together with the Planning Commission's recommendations, are then certified to the governing body of the city or county for approval or rejection.

The Law requires the governing body to hold a public hearing pursuant to specified notice, at which it "shall afford an opportunity to all persons or agencies interested to be heard and shall receive, make known and consider recommendations in writing with reference to the Redevelopment Proposal." Thereafter, the governing body

approves or rejects the Proposal and Contract as submitted. In the event of approval, the Authority is authorized to execute the Contract and to take such action as may be necessary to carry it out.

The Law prescribes certain provisions for a Redevelopment Contract between the Authority and a Redeveloper, including the amount of consideration to be paid by the Redeveloper to the Authority, a guarantee of completion within specified time limits, a prohibition on transfer of the Area or Project by the Redeveloper without the consent of the Authority, safeguards for proper maintenance of all parts of the Project, such other continuing controls as may be deemed necessary to effectuate the purposes of the Act, and "such provisions as the Authority may deem desirable to run with the land in order to effectuate the purposes of the Act."

2. *Proceedings Taken Under the Statute.*

As shown by exhibits annexed to the complaint (pp. 1a-92a) all requirements of the Law were duly complied with.*

In accordance with the Law, the Urban Redevelopment Authority of Pittsburgh was duly created.

On March 25, 1947, after an extensive study (pp. 31a-47a), the Planning Commission of Pittsburgh certified a "Redevelopment Area" of approximately 59 acres in the point area of Pittsburgh, bounded by the Allegheny and Monongahela Rivers and by Stanwix and Ferry Streets, and prepared a Plan for its Redevelopment. Thirty-six acres of this tract were later acquired by the Commonwealth of Pennsylvania for the purpose of creating a public park. The Authority interested The Equitable Life As-

* Unless expressly indicated otherwise, all page references hereafter are to the plaintiff's complaint and the exhibits attached thereto.

surance Society of the United States in redeveloping the remaining 23 acres, and after negotiations agreed upon a proposed Redevelopment Contract with The Equitable as Redeveloper.

In accordance with the Law, the Contract and Proposal were approved by the Authority on November 16, 1949, transmitted to the City Planning Commission of Pittsburgh on November 18, 1949, and approved on November 25, 1949 by the Planning Commission, which so notified the Council of the City of Pittsburgh. The Authority transmitted the Proposal and Contract to the Council. (p. 1a.)

The Council of the City of Pittsburgh, pursuant to due notice, held a public hearing on January 3, 1950, at which an opportunity for a hearing was afforded to all interested persons and agencies and written recommendations with reference to the Proposal and Contract were received, made known, and considered. (p. 89a.)

The Council approved the Proposal and Contract by Ordinance No. 4 of January 27, 1950. (p. 90a.) On February 14, 1950 The Equitable Life Assurance Society and the Authority executed a Redevelopment Contract in the form contained in the Redevelopment Proposal approved by the Council. (pp. 50a-72a.) The Authority thereafter passed a resolution appropriating property in the Redevelopment Area, including plaintiff's land and building, and published the resolution in the March 23 and 24, 1950, issues of three newspapers of general circulation in Allegheny County. (p. 7.)

The Contract (pp. 50a-72a) entered into between defendant Urban Redevelopment Authority of Pittsburgh, and defendant Redeveloper (The Equitable Life Assurance Society of the United States) provided that the Authority, with funds supplied by the Redeveloper, should

acquire title to land in the Project Area, except for designated properties, and should thereafter convey such land to the Redeveloper. The Redeveloper covenanted, among other things, to clear the Area of existing structures, with designated exceptions, to construct three modern office buildings of not less than 18 stories in accordance with a Plan annexed to the Contract, to rehabilitate buildings to remain standing, to construct facilities for off-street parking, to dedicate designated strips for public street purposes as required by the City of Pittsburgh, to plant and landscape the Area, to secure housing for families permanently residing in the Area who are displaced by the Redevelopment, to arrange for relocation and reconstruction of public utilities within the Area, and to grant to the City of Pittsburgh, free of charge, necessary rights of way for sewer and water mains. The contract also obligated the Redeveloper not to use or lease any of the property for other than the uses and buildings permitted by the Plan for a period of 25 years without prior written consent of the Authority. The Contract also contained the Redeveloper's agreement, as a covenant running with the land, not to discriminate in the use or sale of the Contract Area or any portion thereof against any person because of race, color, religion or national origin. The Contract contained further provisions assuring such continuing controls as might be necessary to effectuate the purposes of the Law.

Plaintiff failed to utilize her opportunity to be heard at the public hearing on the Project before the City Council. She made no objection to the Project until the Proposal and Contract had been approved by the Authority, the City Planning Commission, and the City Council. On April 5, 1950, after the Authority had already condemned part of the property within the Area and the Redeveloper had incurred very substantial obligations under its contract with the Authority, plaintiff commenced this action.

3. *The Complaint.*

The Complaint (pp. 1-20), after reciting steps taken by the City Planning Commission, the Authority, the City Council and the Redeveloper, summarized above, sought an injunction against condemnation of plaintiff's land on grounds of alleged violation of the due process clause of the Fourteenth Amendment to the United States Constitution, based upon the following allegations:

A. that the Law and the Contract made thereunder provide for the taking of private property for the private use and profit of the Redeveloper;

B. that the Law fails to establish adequate standards of blight, and delegates legislative power to the City Planning Commission;

C. that the Contract unreasonably discriminates between land selected for, and land exempted from, acquisition by the Authority; and

D. that the City Planning Commission's certification of the blighted Area is arbitrary because

1. it was made without public hearing, and

2. the Area is not in fact blighted.

Questions Raised on This Appeal

The issues raised by plaintiff in her Assignment of Errors and Jurisdictional Statement are in substance the same as those raised in her Complaint and decided adversely to her.

In addition, plaintiff now contends that she and other interested property owners are entitled to judicial review in each instance of the questions whether the taking is for a public use and whether the area certified is in fact blighted.

No question of just compensation, assured by the Law and Constitution of Pennsylvania, is involved.

The Questions Involved Are So Unsubstantial as Not to Need Further Argument

All the contentions made by plaintiff on this appeal are clearly without merit under numerous rulings of this Court establishing the broad scope of state condemnation power.

Moreover, those same contentions have been decisively rejected by Pennsylvania courts, including the Supreme Court of Pennsylvania, in three recent cases testing the constitutionality of the Law and of the taking in the Area certified as blighted.

Every conceivable aspect of the legality of the taking here in issue has been thoroughly explored in litigation in the courts of Pennsylvania. In *Belovsky* v. *Redevelopment Authority of City of Philadelphia,* 357 Pa. 329, 54 A. 2d 277 (1947) the Supreme Court of Pennsylvania upheld the constitutionality of the Law in sweeping terms. Contrary to plaintiff's statements, the complaint in that case raised questions of constitutionality under the fourteenth amendment as well as under the state constitution. This ruling was reiterated, and the constitutionality of the specific Redevelopment Project involved in this case was sustained by the Supreme Court of Pennsylvania in *Schenck* v. *City of Pittsburgh et al.,* 364 Pa. 31, 70 A. 2d 612 (1950.) Again, contrary to plaintiff, that case was in no sense collusive. The published reports of the case show that other affected landowners intervened as parties plaintiff.

The identical questions raised in this action and on this appeal were decided adversely to plaintiff in *Duff's Iron City College* v. *City of Pittsburgh et al.,* decided on April 22, 1950 by the Court of Common Pleas of Allegheny County sitting in banc. The opinion in that case, not yet reported, is attached as Appendix B hereto. The plaintiff in that

action was another owner of property within the Area to be condemned. The attorneys for plaintiff in that action were the same as the attorneys for plaintiff in this action. The complaint in that action was in substance the same as the complaint in this action, and certain paragraphs thereof were identical, word for word, with corresponding paragraphs of the complaint in this action.

The *Duff's Iron City College* complaint contained the same allegations of unconstitutionality of the Law and proceedings thereunder, under the Constitutions of Pennsylvania and the United States. The same grounds of irreparable injury were alleged, and substantially the same injunctive relief was prayed. The exhibits to that complaint were identical in all respects with the exhibits to this complaint. In substance, that complaint was the same as this complaint. The only difference was in the names of the plaintiffs in the two actions. Both plaintiffs, however, were owners of property within the Area to be condemned.

The Court dismissed the plaintiff's bill of complaint and sustained in all respects the constitutionality of the Law and proceedings taken thereunder, under the Pennsylvania and United States Constitutions. In its opinion the Court reviewed the holdings of the Supreme Court of Pennsylvania in the *Belovsky* and *Schenck* cases, and declared that "A time comes when there must be an end to litigation, and we venture to suggest that that time has come in this case."

In dismissing the complaint in this action the three-judge District Court below relied in part on the foregoing three decisions of the Pennsylvania courts (see opinion, Appendix A hereto).

I. The Taking Is for a Public Use Within Requirements of the Fourteenth Amendment as Settled by This Court.

Plaintiff's contention that her land is to be turned over to the Redeveloper for the same private use as that to which it is now devoted is disproven by the Redevelopment Area Plan annexed to her complaint (pp. 13a-29a). That Plan, showing the street relocation program involved in the redevelopment contract, shows that the Redeveloper is bound to dedicate to the City some of the very land to be taken from plaintiff, and that relocated Liberty Avenue will cover a part of plaintiff's land. Moreover, the Authority's continuing controls over the redeveloper's use of the land provided by the Redevelopment Contract (pp. 66a-68a) in accordance with the law (p. 48a) insure public control of the use of the land even after its transfer to the Redeveloper. The unrestricted rights of normal private ownership are denied the Redeveloper.

The public nature of this use of the land is established by principles laid down in a long line of state condemnation cases decided by this Court. Those cases uphold a broad concept of uses which are of a public nature so as to justify condemnation of land therefor. Among such uses are those connected with health, welfare, community prosperity, aesthetic satisfaction and recreation. The holdings of this Court also make it clear that neither (1) subsequent transfer to, or even initial condemnation by, a private person, nor (2) the possibility of incidental gain to a private person, nor (3) lack of subsequent state control over private users' use of condemned land, nor (4) restriction of use of the land condemned to a small section of the public, will convert an otherwise public use into a private one.

Decisions establishing these propositions are:

Fallbrook Irrigation District v. *Bradley,* 164 U. S. 112 (1896);

Clark v. *Nash*, 198 U. S. 361 (1905);

Strickley v. *Highland Boy Mining Co.*, 200 U. S. 527 (1906);

Hairston v. *Danville & Western Railway*, 208 U. S. 598 (1908);

Union Lime Co. v. *Chicago & N. W. Ry. Co.*, 233 U. S. 211 (1914);

Mt. Vernon Cotton Co. v. *Alabama Power Co.*, 240 U. S. 30 (1916);

Joslin Co. v. *Providence*, 262 U. S. 668 (1923).

An example is *Rindge Co.* v. *Los Angeles*, 262 U. S. 700 (1923) in which this Court ruled that:

> "Public uses are not limited, in the modern view, to matters of mere business necessity and ordinary convenience, but may extend to matters of public health, recreation, and enjoyment. Thus, the condemnation of lands for public parks is now universally recognized as a taking for public use. *Shoemaker v. United States*, 147 U. S. 282, 297. A road need not be for a purpose of business to create a public exigency; air, exercise, and recreation are important to the general health and welfare; pleasure travel may be accommodated as well as business travel; and highways may be condemned to places of pleasing natural scenery." (pp. 707-8.)

The import of these decisions was summarized as follows by the Court of Appeals for the First Circuit in the recent case of *People of Puerto Rico* v. *Eastern Sugar Associates*, 156 F. 2d 316 (1 Cir. 1946) in which this Court denied certiorari, 329 U. S. 772 (1946):

> "The argument is made that due process is denied because the purpose for taking the appellees' land is only to sell or lease it to others for them to use personally instead of for use by the general public. This argument has been advanced several times in the Supreme Court of the United States in cases of this sort and every time it has been rejected. • • •

> "Some public benefit or advantage must accrue from the transfer and mere financial gain to the taker is not enough, since the Supreme Court has intimated that the power of eminent domain cannot be used by the taking authority in aid of 'an outside land speculation.' Brown v. United States, 263 U. S. 78, 84, 44 S. Ct. 92, 94, 68 L. Ed. 171. But the local Legislatures nevertheless have wide scope in deciding what takings are for a public use. This is definitely established by the cases arising under the Fourteenth Amendment already cited and by many more. In the first place a state's power of eminent domain does not necessarily have to be rested upon the ground that the taking is considered necessary for the public health, but may be exercised if the taking 'be essential or material for the prosperity of the community.' Fallbrook Irrigation District case, 164 U. S. page 163, 17 S. Ct. 65, 41 L. Ed. 369. And in the second place a local Legislature, because of its intimate knowledge of local conditions, has great latitude in determining what uses of land are conducive to community prosperity." (pp. 323-4.)

The taking upheld in the *Puerto Rico* case consisted of a condemnation of land belonging to one private owner for the purpose of sale in small parcels to other private owners as part of a program of land reform. If promotion of the general economic welfare of the community justifies condemnation of this drastic type it certainly justifies condemnation for the purposes of municipal planning and improvement under state supervision. See also *Matter of Murray* v. *LaGuardia*, 291 N. Y. 320, 52 N. E. 2d 884 (1943) in which this Court denied certiorari, 321 U. S. 771 (1944). As another three-judge District Court said in upholding a similar project in *United States* v. *Boyle*, 52 F. Supp. 906 (N. D. Ohio 1943), which this Court affirmed *sub. nom. City of Cleveland* v. *United States*, 323 U. S. 329 (1945):

> "While it is true that in former periods of our history such projects might not have been necessary for the

general welfare, it is also true, as stated in Helvering v. Davis, supra, (301 U. S. 640) that 'Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the nation.'" (p. 908.)

II. The Pennsylvania Courts Have Held the Taking to Be for a Public Use, and This Court Has Uniformly Upheld Such a State Determination.

The General Assembly of Pennsylvania has found that "acquiring and replanning" blighted areas, and "holding or disposing of them in such manner that they shall become available for economically and socially sound redevelopment," are "public uses for which . . . private property may be acquired by the exercise of the power of eminent domain." (Urban Redevelopment Law, §2)

The decisions of the Pennsylvania Supreme Court in *Belovsky* v. *Urban Redevelopment Authority of Philadelphia*, supra, and *Schenck* v. *City of Pittsburgh*, supra, have settled that (1) the use for which property is here taken is a public use, and (2) the fact that the land will be turned over to a private Redeveloper does not invalidate this conclusion.

In *Belovsky*, in holding that the taking provided by the law is for a public purpose, the Supreme Court of Pennsylvania held that the Law had

> "The one major purpose of the elimination and rehabilitation of the blighted sections of our municipalities, and that purpose certainly falls within *any* conception of 'public use' for nothing can be more beneficial to the community as a whole than the clearance and reconstruction of those sub-standard areas which are characterized by the evils described in the Urban Redevelopment Law." (p. 339.)

In so holding, the court rejected the argument that the Law permitted property to be taken from one private

owner and given to another. The court pointed out that the purposes of the Law did not require continued public ownership of the property and held that:

> "When, therefore, the need for public ownership has terminated, it is proper that the land be retransferred to private ownership, subject only to such restrictions and controls as are necessary to effectuate the purposes of the act. It is not the object of the statute to transfer property from one individual to another; such transfers, so far as they may actually occur, are purely incidental to the accomplishment of the real or fundamental purpose. * * *" (p. 340.)

In *Schenck* the Supreme Court of Pennsylvania rejected arguments that the concept of public use is limited to matters of health, safety and morals, and that therefore commercial redevelopment of business districts, in contrast to the improvement of undesirable living conditions, is not a public purpose:

> "* * * If the Urban Redevelopment Law were to be held to apply only to the clearing of blighted *residential* areas and the reconstruction of dwelling houses thereon there would have been no reason for its enactment since it would have added nothing to the Housing Authorities Law already in force. On the contrary, the Urban Redevelopment Law was obviously intended to give wide scope to municipalities in redesigning and rebuilding such areas within their limits as, by reason of the passage of years and the enormous changes in traffic conditions and types of building construction, no longer meet the economic and social needs of modern city life and progress. Such needs exist, even if from a different angle, as well in the case of industrial and commercial as of residential areas. * * *" (p. 37.)

The court therefore concluded that:

> "there is no feature of this redevelopment project, of the proceedings taken to effectuate it, or the con-

> tract by which it is to be accomplished, which is violative of the Constitution or the Urban Redevelopment Law." (p. 39.)

The Court in *Duff's Iron City* (Appendix B, p. 16) reiterated these holdings and described the project as "the greatest development in this community in the lifetime of any of us." (Appendix B, p. 16.) The Court held that any hardship or inconvenience to plaintiff and other property owners within the condemned area as a result of the redevelopment "must yield to the ever-growing social and economic progress of the greater Pittsburgh community." (Appendix B, p. 16.)

While these determinations by Pennsylvania courts are of course not conclusive upon this Court, they are entitled to the greatest weight. In all the numerous cases which have come before it, this Court has never disturbed a taking of land upheld by a state court as a taking for a public use.

In *Hairston* v. *Danville & Western Railway*, 208 U. S. 598, (quoted with approval in *U. S. ex rel. T. V. A.* v. *Welch*, 327 U. S. 546, 552 (1946)) this Court said:

> "'No case is recalled where this court has condemned, as a violation of the Fourteenth Amendment, a taking upheld by the state court as a taking for public uses in conformity with its laws.'" (p. 607.)

And in the *T. V. A.* case, supra at p. 552, in which the opinions discuss at length the limited scope of judicial review of public purpose declarations by legislatures, this Court cited with approval the following statement in one of Mr. Justice Holmes' dissents:

> "• • • I am not aware of any limitations in the Constitution of the United States upon a State's power to condemn land within its borders, except the requirements as to compensation." (See *Traction Company* v. *Mining Company*, 196 U. S. 239 at p. 260).

The regard which this Court accords state determinations that a given taking is for a public use is indicated in *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112 (1896):

> "The people of California and the members of her legislature must in the nature of things be more familiar with the facts and circumstances which surround the subject and with the necessities and the occasion for the irrigation of the lands than can anyone be who is a stranger to her soil. This knowledge and familiarity must have their due weight with the state courts which are to pass upon the question of public use in the light of the facts which surround the subject in their own state. For these reasons, while not regarding the matter as concluded by these various declarations and acts and decisions of the people and legislature and courts of California, we yet, in the consideration of the subject, accord to and treat them with very great respect, and we regard the decisions as embodying the deliberate judgment and matured thought of the courts of that state on this question." (p. 160)

Among numerous other cases to the same effect are the following:

Clark v. *Nash*, 198 U. S. 361 (1905);

Strickley v. *Highland Boy Mining Co.*, 200 U. S. 527 (1906);

Union Lime Co. v. *Chicago & N. W. Ry. Co.*, 233 U. S. 211 (1914);

Mt. Vernon Cotton Co. v. *Alabama Power Co.*, 240 U. S. 30 (1916);

Joslin Co. v. *Providence*, 262 U. S. 668 (1923);

People of Puerto Rico v. *Eastern Sugar Associates*, 156 F. 2d 316 (1st Cir. 1946), *cert. den.*, 329 U. S. 772 (1946).

III. The Record Conclusively Refutes Plaintiff's Contention That the City Planning Commission's Finding of Blight Was Arbitrary and Capricious.

The City Planning Commission's certification of blight was attached to and made a part of the Complaint. (Pp. 30a-48a)

Defendants' motion to dismiss did not admit allegations in the complaint which "appear by a record or document included in the pleadings to be unfounded."

Cohen v. *United States,* 129 F. 2d 733, 736 (8th Cir., 1942);

Vilter Mfg. Co. v. *Loring,* 136 F. 2d 466, 468 (7th Cir., 1943);

Imperial Oil and Gas Prod. Co. v. *United Gas Pipe Line Co.,* 77 F. Supp. 336, 341 (W.D. La. 1948).

See also *Dillon* v. *Barnard,* 21 Wall. 430 (U. S. 1875).

The certification itself disproves plaintiff's allegations of arbitrariness. As indicated by the opinions in the *Schenck* and *Duff's Iron City* cases, the Pennsylvania courts had before them in those cases the Planning Commission's certification of blight. In the *Duff's Iron City* case the court held:

> "An examination of those documents, which are plaintiff's Exhibits, refute a capricious or arbitrary act or acts on the part of any of the named defendants." (App. B, p. 10)

The certification demonstrates that among the factors considered by the Planning Commission were the following:

> (1) The reasonableness and advisability of the classification of the area for redevelopment purposes (pp. 31a-33a);
>
> (2) The character of the lot-division and street pattern, and their appropriateness for a modern central business district (pp. 34a-41a);

(3) The effect of the street pattern upon the economic use of the area (pp. 38a, 40a);

(4) The effect of the existing block subdivision on the availability of adequate natural light and natural ventilation within buildings presently in the area (p. 39a);

(5) The accommodations available for off-street loading space and access to it (p. 39a);

(6) The availability of off-street parking space (p. 39a);

(7) The density of building development (pp. 40a-41a);

(8) The types of land uses, their effect on the economic development of the area, and the economic uses to which the various buildings in the area were put (pp. 41a-42a);

(9) The effect which an inter-mixture of inharmonious and economically inconsistent uses had upon commercial enterprises in the area and the possibility of future long-term capital investment (p. 42a); and

(10) The improvements made in the area during the past 25 years by way of new construction or otherwise (pp. 43a-44a).

The certification contains a large number of findings of primary facts. The boundaries of the nine city blocks involved in the area are set forth at pages 33a-34a. The widths of the streets, sidewalks and ways are set forth on pages 34a-35a. The principal street changes since 1784 are set forth at page 36a. The block subdivision into building lots and their character is described at pages 37a-41a. The existing land uses are described at pages 41a-42a. The dates of construction and the amount of investment in the major buildings in the area are set forth at pages 43a-44a. And the depreciation of the land assessment values

of the properties classified by blocks as compared to the depreciation of similar values for the city as a whole between 1933 and 1945 are set forth at pages 44a-45a.

Not one of these basic findings of fact is challenged in the complaint. Plaintiff challenges only the conclusions of the Planning Commission that the planning is "inadequate"; that the land coverage by the buildings is "excessive"; that the design and arrangement of the buildings is "defective"; that the street and lot layouts are "faulty"; that the buildings are being devoted to "an economically undesirable" use; and that the buildings are being devoted to a "socially undesirable" use. Thus, plaintiff challenges merely those determinations of ultimate fact by the Planning Commission that are within its province as the expert body to whom the function of making such determinations has exclusively been delegated by the Legislature.

The legislative procedures which the Law required to be followed after certification of a blighted area by the Planning Commission, and before any exercise of the power of eminent domain, furnished adequate safeguards against arbitrary or capricious action. After certification, the Authority proposes a plan for redevelopment, the Planning Commission approves it, and the City Council, after a public hearing, must grant final approval before a redevelopment contract can be made.

The fact that the redevelopment plan here involved has survived every step of this legislative testing process belies arbitrariness or caprice. Plaintiff had an opportunity to oppose this project at the public hearing before the City Council, and there to raise all questions here urged. She did not, however, do so. The record justifies the conclusion of the Common Pleas Court of Allegheny County in the *Duff's Iron City* case:

> "A review of the exhibits which are attached to the plaintiff's Bill reveal the fact that this proposed

act of eminent domain has been preceded by more elaborate and careful investigations than have probably accompanied any act of eminent domain, which has been discussed in the history of the courts of this Commonwealth." (p. 10, App. B)

The essence of plaintiff's case is that she disagrees with the judgment of the Planning Commission. What she seeks is an opportunity to call witnesses who would presumably dispute the expert opinions of the Planning Commission. But it is settled that the federal courts will not substitute their judgment on matters of this kind for the judgment of a state administrative agency:

> "Nothing in the Constitution warrants rejection of these expert conclusions. Nor on the basis of intrinsic skills and equipment, are the federal courts qualified to set their independent judgment on such matters against that of the chosen state authorities. For its own good reasons Texas vested authority over these difficult and delicate problems in its railroad commission. Presumably that body, as the permanent representative of the state's regulatory relation to the oil industry equipped to deal with its ever changing aspects, possesses an insight and aptitude which can hardly be reached by judges who are called upon to intervene at fitful intervals.
>
> "* * * When we consider the limiting conditions of litigation—the adaptability of the judicial processes only to issues definitely subscribed and susceptible of being judged by the techniques and criteria within the special competence of lawyers—it is clear that the Due Process Clause does not require the feel of the expert to be supplanted by an independent view of judges on the conflicting testimony and prophecies and impressions of expert witnesses." (*Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 311 U. S. 570, 575-576 (1941)).

IV. Exercise of the Power of Eminent Domain Was Properly Delegated by the Pennsylvania Legislature, Was Governed by Adequate Standards and Is Not Subject to Judicial Review.

There can be no doubt of the power of the Pennsylvania Legislature to delegate to the City Planning Commission the function of determining the existence of blighted areas.

In *Highland Farms Dairy* v. *Agnew*, 300 U. S. 608 (1937), this Court said:

> " • • • How power shall be distributed by a state among its governmental organs is commonly, if not always, a question for the state itself." (p. 612)

And in *Joslin Co.* v. *Providence*, 262 U. S. 668 (1923) this Court said:

> "That the necessity and expediency of taking property for public use is a legislative and not a judicial question is not open to discussion. Adirondack Ry. Co. v. New York, supra, at p. 349; Shoemaker v. United States, 147 U. S. 282, 298; 160 U. S. 668, 685; Boom Co. v. Patterson, 98 U. S. 403, 406. Neither is it any longer open to question in this court that the legislature may confer upon a municipality the authority to determine such necessity for itself. Bragg v. Weaver, supra, at p. 58; Sears v. Akron, 246 U. S. 242, 251." (p. 678)

In the *Belovsky* case the Pennsylvania Supreme Court decisively rejected the argument that the procedures provided in the law constituted an invalid delegation of legislative power (at pp. 341-343).

It is equally clear that the standards of "blight" established by the Legislature were constitutionally adequate. It is well within the constitutional powers of a state legislature to lay down general rules, which need be no more detailed or exhaustive than the circumstances rea-

sonably warrant or permit, and to delegate to administrative bodies the power and discretion to apply them. *Bourjois, Inc.* v. *Chapman,* 301 U. S. 183 (1937); *Plymouth Coal Co.* v. *Pennsylvania,* 232 U. S. 531 (1914). Where such a statute has been construed by the state courts as not conconferring an arbitrary discretion on the administrative agency and where the statute indicates with reasonable clarity the general standards to be applied by the agency, it will not be presumed by the federal courts that the powers conferred were or will be exercised arbitrarily, and the delegation is consistent with the federal constitution. *Douglas* v. *Noble,* 261 U. S. 165 (1923).

The standards to be applied by the Planning Commission were set forth in § 2 of the Redevelopment Law, and the Pennsylvania Supreme Court has expressly determined that the Law "contains as definite a description of what constitutes a blighted area as it is reasonably possible to express • • •." *Belovsky* v. *Redevelopment Authority,* 357 Pa. 329, 342, 54 A. 2d 277, 283 (1947).

Finally, it is well settled that the exercise by the legislature or its agency, in a particular case, of the power to take property is not judicially reviewable. Neither the necessity nor the extent of the taking, including alleged discrimination in the selection and exemption of property, will be inquired into by the courts. This Court so held in the *Joslin* case, *supra:*

> "The question is purely political, does not require a hearing, and is not the subject of judicial inquiry." (p. 678.)

And in *Rindge Co.* v. *Los Angeles,* 262 U. S. 700 (1923) this Court held:

> "• • • The necessity for appropriating private property for public use is not a judicial question. This power resides in the legislature, and may either be

> exercised by the legislature or delegated by it to public officers. 'Where the intended use is public, the necessity and expediency of the taking may be determined by such agency and in such mode as the state may designate. They are legislative questions, no matter who may be charged with their decision, and a hearing thereon is not essential to due process in the sense of the 14th Amendment.' Bragg v. Weaver, 251 U. S. 57, 58." (p. 708).

The Pennsylvania Supreme Court made the same ruling in the *Schenck* case (at p. 36).

Similar decisions are numerous. For example, see *North Laramie Land Co.* v. *Hoffman*, 268 U. S. 276 (1925); *Sears* v. *City of Akron*, 246 U. S. 242 (1918); *Adirondack Railway* v. *New York State*, 176 U. S. 335 (1900); *Zurn City of Chicago*, 389 Ill. 114, 59 N. E. 2d 18 (1945).

Conclusion

To reverse the order of the statutory District Court, this Court would be required to overrule the legislative and judicial determinations of the Commonwealth of Pennsylvania that

> (1) redevelopment of blighted urban areas along sound economic and social lines is a public purpose, and
>
> (2) determination of the particular area to be redeveloped and the character of the redevelopment is properly left by the Legislature to the City Planning Commission, the Urban Redevelopment Authority, and the elected City Council.

It is respectfully submitted that the questions on which decision of this appeal depends are so unsubstantial as not to need further argument, and that therefore defendants' motion to affirm the order of the District Court should be granted, with costs.

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APPENDIX A

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. 8706 Civil Action

JAYNE L. BURT, *Plaintiff*,

vs.

CITY OF PITTSBURGH, a Municipal Corporation, URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH, a Body Public, Corporate and Politic, and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a Business Corporation, *Defendants*

Before Goodrich, Circuit Judge, and Gourley and Burns, District Judges

PER CURIAM:

This case is before a three-judge court summoned pursuant to 28 U. S. C. A. #2281. The Plaintiff seeks to enjoin the defendants from proceeding with a plan heretofore approved for the development of an area in the City of Pittsburgh. Plaintiff attacks the constitutionality of the proceedings; hence the three-judge court. The statutes under which the Redevelopment project proceeds were before the Supreme Court of Pennsylvania in Schenck v. The City of Pittsburgh, 364 Pa. 31 (1950) and Belovsky v. Redevelopment Authority of the City of Philadelphia, et al., 357 Pa. 329, 54 A. 2nd 277 (1947). We think that all questions having to do with the constitutionality of the statutes under Pennsylvania law are determined by those decisions. During the past week the Court of Common Pleas of Allegheny County in Duff's Iron City College v. City of Pittsburgh, et al., has dismissed a bill similar to the one before us.

We are unanimously of the conclusion that the motion to dismiss should be granted. We do not find in the plaintiff's complaint and the exhibits attached thereto anything to indi-

cate that the statutes themselves or the action of the constituted authorities in carrying them out violated the plaintiff's constitutional rights under the constitution of the United States. We are reinforced in our conclusion that the City improvement project is not a matter into which the federal courts should rush lightly when we consider the words of the Supreme Court in U. S. ex rel TVA v. Welch, 327 U. S. 546 (1946).

The motion to dismiss is granted, with costs.

(S.) HERBERT F. GOODRICH,
Circuit Judge.
(S.) WALLACE S. GOURLEY, D. J.
(S.) OWEN M. BURNS, D. J.

April 25, 1950.

APPENDIX B

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

No. 265, July Term, 1950

In Equity

DUFF'S CITY COLLEGE, a Corporation, *Plaintiff*,

v.

CITY OF PITTSBURGH, a Municipal Corporation, URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH, a Body Public, Corporate and Politic, and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a Business Corporation, *Defendants*

Before: Thompson, Weiss and O'Brien, JJ.

PER CURIAM OPINION SUR PRELIMINARY OBJECTIONS TO BILL

The Pleadings

The plaintiff college is the owner of a tract of land located at 424-426 Duquesne Way in the Second Ward of

the City of Pittsburgh, which is included in the Urban Redevelopment Plan of the City of Pittsburgh.

One of the defendants, The Equitable Life Assurance Society of the United States, has contracted with the Urban Redevelopment Authority to construct certain large office buildings on the site of the redevelopment.

The plaintiff's Bill includes certain exhibits having to do with the procedure adopted pursuant to the Act of Assembly of May 24, 1945 P. L. 991, which is known as the Urban Redevelopment Act and which is the foundation authority for all that has been done with reference to this redevelopment. These exhibits, which are comprehensive documents are as follows:

Redevelopment Proposal,
Plan of Redevelopment Area No. 1,
City Planning Commission
An Analysis of the Point Area, Westwardly of Stanwix and Ferry Streets,
Contract
Made between the Urban Redevelopment Authority of Pittsburgh and The Equitable Life Assurance Society of the United States,
Ordinance
Authorizing the Mayor and the Director of Public Works to enter into a contract with the Urban Redevelopment Authority,
Recommendation of Planning Commission approving a proposal for the redevelopment project,
File of Council, City of Pittsburgh and the
Tender and Notice of Intention to present Bond to Court for approval and filing.

The Bill sets forth the procedure, which has been followed by the various public authorities involved and in Paragraph 13 avers:

"13. Plaintiff avers that having accomplished, 'ex parte', the foregoing procedural steps, Authority has now moved, purportedly under the provisions of said Urban Redevelopment Law, to condemn Plaintiff's land, notice of intention to condemn said land, inter

alia, having been officially published by Urban Redevelopment Authority in March 23, 1950 issue of Pittsburgh Sun Telegraph, a news publication circulating generally within the County of Allegheny, Commonwealth of Pennsylvania."

Plaintiff avers that pursuant to all of the action taken, the Authority intends to exercise a power conferred upon it by the Urban Redevelopment Act to condemn the plaintiff's property.

In Paragraph 16 of the Bill the plaintiff, after referring to the certification of the City Planning Commission, states that it "is a certification which is wholly arbitrary, capricious and without basis in fact or law and which was arrived at by said Commission no less than three years prior to the present proposed taking by Authority of Plaintiff's land and building." Plaintiff then sets out its reasons for regarding said certification as being capricious, to wit, that it was arrived at without a public hearing, that it was based upon data obtained from another City agency, that it had no regard for the increased value of the plaintiff's premises resulting from the acquirement by the Federal Government of 36 acres at the point for a National Park; that it was arrived at without regard to the fact that the assessment rolls of the City do not accurately reflect the value and disregarded the fact that building values in the area have increased in recent years; that the certificate was arrived at without regard to any recognizable standards for finding a property economically or socially undesirable and without consideration of how or in what degree the area certified is blighted.

In Paragraph 17 the plaintiff contends in substance that the redevelopment area is not a blighted area. Paragraph 18 avers that the property involved is to be controlled exclusively by a private business corporation and in Paragraph 19 avers that the Authority is attempting to condemn land for landscaping purposes.

In Paragraph 20, 21 and 22 it is averred that the proposed development violates the provisions of the 14th Amendment to the Federal constitution and in Paragraph

25 violates the provisions of Section 1 Article II of the constitution of Pennsylvania.

It is averred in Paragraphs 24 and 25 that those facts and standards constitute such a delegation of legislative power as to violate the 14th Amendment of the Constitution of the United States and Section 1 of Article II of the constitution of Pennsylvania.

The prayer of the Bill seeks a preliminary injunction against the various defendants from proceeding with the Redevelopment Plan.

The defendants' Answer raises preliminary objections averring in substance that the Bill of Complaint does not entitle the plaintiff to the relief prayed for, that the matters involved have been adjudicated already by the Supreme Court of Pennsylvania in Schenck v. City of Pittsburgh, 364 Pa. 31 (1950); that the plaintiff in the present proceeding is in the same legal position as were the complaining parties in the Schenk case and is bound by the decision in that case; that the action of the Planning Commission is not subject to judicial review and is not arbitrary and capricious.

The Preliminary Objections were heard by a court en banc on April 19, 1950 and were fully and elaborately argued by counsel for all parties concerned.

Discussion

This case has been preceded by litigation, which has been already passed upon by the Supreme Court of Pennsylvania. The Redevelopment plan came before that court in Belovsky v. Redevelopment Authority of Philadelphia, et al. at 357 Pa. 329.

In addition to the original parties, the Attorney General of Pennsylvania, the City of Pittsburgh, the Pittsburgh Redevelopment Authority and various amici curiae were represented by briefs and oral argument.

This matter again came before the Supreme Court when it assumed original jurisdiction in the case of Schenck v. City of Pittsburgh at 364 Pa. 31.

Inasmuch as the very able and forceful counsel for the plaintiff stated at the oral argument before us that he

followed and approved all that was said by Mr. Justice Stern of the Supreme Court, who wrote the opinions in both the foregoing cases, it might be helpful now to give some synopsis of what was decided by the court in those cases.

In Belovsky v. Redevelopment Authority, 357 Pa. 329 supra, Mr. Justice Stern speaking for the court said at page 333:

> "The Urban Redevelopment Law determines and declares as a matter of legislative finding—(a) 'That there exist in urban communities in this Commonwealth areas which have become blighted because of the unsafe, unsanitary, inadequate or overcrowded condition of the dwellings therein, or because of inadequate planning of the area, or excessive land coverage by the building thereon, or the lack of proper light and air and open space or because of the defective design and arrangement of the buildings thereon, or faulty street or lot layout or economically or socially undesirable land uses. (b) That such conditions or a combination of some or all of them have and will continue to result in making such areas economic or social liabilities, harmful to the social and economic well-being of the entire communities in which they exist, depreciating values therein, reducing tax revenues, and thereby depreciating further the general community-wide values. (c) That the foregoing conditions are beyond remedy or control by regulatory processes, * * *."

The opinion then recites that the Redevelopment Act declares it to be "the policy of the Commonwealth of Pennsylvania to promote the health, safety and welfare of the inhabitants thereof by the creation of bodies corporate and politic to be known as Redevelopment Authorities". The opinion later sets forth the procedure, which the Redevelopment Act provides and further states that—

> "Legislation similar to these Pennsylvania statutes has been adopted in 23 other states. * * *.

The present attack upon the constitutionality of the Urban Redevelopment Law centers largely upon the grant therein made to the Redevelopment Authorities of the power to exercise the right of eminent domain."

The opinion at page 338 calls attention to the fact that the Urban Redevelopment Act has as it prototype the Housing Authority Law of May 28, 1937 P. L. 955, which was held to be constitutional in Dornan v. Philadelphia Housing Authority, 331 Pa. 209. Quoting further from the opinion at the bottom of page 338:

"In the case of the Urban Redevelopment Law, therefore, the justification of the grant of the power of eminent domain is even clearer than in the case of the Housing Authorities Law, there being in the present act only the one major purpose of the elimination and rehabilitation of the blighted sections of our municipalities and that purpose certainly falls within any conception of 'public use' for nothing can be more beneficial to the community as a whole than the clearance and reconstruction of those sub-standard areas which are characterized by the evils described in the Urban Redevelopment Law. * * *.

One of the objections urged against the constitutionality of the Urban Redevelopment Act is the feature of the 'redevelopment project', which contemplates the sale by the Authority of the property involved in the redevelopment, *it being claimed that thereby the final result of the operation is to take property from one or more individuals and give it to another or others.* Nothing, of course, is better settled than that property cannot be taken by government without the owner's consent for the mere purpose of devoting it to the private use of another, even though there be involved in the transaction an incidental benefit to the public. *But plaintiff misconceives the nature and extent of the public purpose which is the object of this legislation.* That purpose, as before pointed out, is not one requiring a continuing ownership of the property as it is in the case of

the Housing Authorities Law in order to carry out the full purpose of that act, but is directed solely to the clearance, reconstruction and rehabilitation of the blighted area, and after that is accomplished the public purpose is completely realized." (Italics supplied.)

Schenck v. Pittsburgh, et al.

As before stated the question at issue here again came before the Supreme Court in the exercise of its original jurisdiction in Schenck v. Pittsburgh, et al. at 364 Pa. 31, the opinion of the Court being again written by Mr. Justice Stern. The original plaintiffs in that case are the owners of property at 420-422 Penn Avenue and the intervening plaintiffs own property on Penn Avenue and Liberty Avenue, all of which are located within the area covered by the Redevelopment project.

At page 33 of the opinion Mr. Justice Stern says:

"The City Planning Commission certified approximately 59 acres which lie immediately to the east of the Point in Pittsburgh's 'Golden Triangle' as a 'blighted' area, and prepared a plan for its redevelopment. The Commonwealth of Pittsburgh had already acquired the westernmost 36 acres of this tract for the purpose of creating there a public park. The Urban Redevelopment Authority of Pittsburgh drafted a proposal for the redevelopment of the remaining 23 acres extending from Duquesne Way to Water Street and bounded on the east by Stanwix Street and Ferry Street; included therein was a proposed redevelopment contract with the Equitable Life Assurance Society of the United States as Redeveloper. The Authority's proposal, after being reviewed and approved by the City Planning Commission, was submitted to the City Council, which held a hearing thereon as prescribed by the Urban Redevelopment Law. Meanwhile plaintiff filed his bill to enjoin the City Council from approving the proposal and the contract to enjoin the City from appropriating any money to carry out the proposal, to enjoin the Authority and the Redeveloper from execut-

ing the contract and to enjoin the Authority from taking any steps to acquire land within the project area by the exercise of the power of eminent domain or to convey any such land to the Redeveloper. * * *.

Plaintiff asserts that the mere fact that the City Planning Commission has certified the tract as a blighted area does not conclusively establish that the redevelopment of this particular land is in fact for a public purpose. The answer to this contention is that, in the absence of any indication that the Commission *did not act in good faith or was wholly arbitrary in certifying the area designated by it as blighted*, its certification to that effect is not subject to judicial review. * * * ." (Italics supplied.)

After reciting the conditions enumerated in the Redevelopment Law as constituting a blighted area, the opinion continues on page 36:

"The existence of these conditions brings the situation clearly within the scope of the Urban Redevelopment Law, and, since that act gives the power of eminent domain to the Urban Redevelopment Authority, *it is for that agency, and not for the courts*, to determine whether or not the power should be exercised in this particular instance. It has been held in many cases that where the right of eminent domain is vested in a municipality, an administrative body, or even a private corporation, the question as to whether the circumstances justify the exercise of the power in a given instance is not a judicial one, at least *in the absence of fraud or palpable bad faith.*"

The Court further says that it was the purpose of the Redevelopment Law "to give wide scope to municipalities in redesigning and rebuilding such areas within their limits as, by reason of the passage of years and the enormous changes in traffic conditions and types of building construction, *no longer meet the economic and social needs of modern city life and progress.*"

Notwithstanding the comprehensive conclusions of these two opinions of the Supreme Court, the plaintiff contends

that the Bill, which has been filed, is based upon the proposition that the actions of the defendants in this case are "wholly arbitrary, capricious and without basis in fact or law". Further, the plaintiff contends that its position is distinguishable from the two preceding opinions in that relief can be granted to it where the defendants have acted arbitrarily and capriciously and without basis in fact or law.

Question

Have the defendants acted in a wholly arbitrary and capricious manner?

The Supreme Court when this matter was before it in the cases, which have been cited and on numerous other occasions has made it clear that the acts of administrative bodies cannot be questioned in the courts merely because of a mistake of judgment. No contention is made that the City Planning Commission, the Urban Redevelopment Authority, the City of Pittsburgh, the Redevolper and all other parties involved in this redevelopment have not strictly followed the provisions of the law.

A review of the Exhibits, which are attached to the plaintiff's Bill reveal the fact that this proposed act of eminent domain has been preceded by more elaborate and careful investigations than have probably accompanied any act of eminent domain, which has been discussed in the history of the courts of this Commonwealth. An examination of those documents, which are plaintiff's Exhibits, refute a capricious or arbitrary act or acts on the part of any of the named defendants. *This was not a project, which was clandestinely conceived and carried out for the benefit of some private person.*

The plaintiff complains that the data used by the City Planning Commission was secured from another public agency. In Section 9 of the Redevelopment Act of May 24, 1945 P. L. 991 conferring powers on an Authority it is provided:

> "(a) To procure from the planning commission the designation of areas in need of redevelopment and its recommendations for such redevelopment;

(b) To study the recommendations of the planning commission for redevelopment of any area and to make its own additional investigations and recommendations thereon;

(c) To cooperate with any government or municipality as herein defined;

and with reference to this Mr. Justice Stern said in Belovsky v. Redevelopment Authority, supra, at page 335:

"The scheme of redevelopment proceeds under the act as follows:—The local planning commission makes a 'redevelopment area plan' designating an area which it finds to be blighted because of the existence of the conditions enumerated in the act and containing recommendations for the redevelopment of such area. The plan must set forth the boundaries of the area, information concerning its buildings and population, a statement of the existing uses of the real property therein, a statement of the proposed uses following redevelopment, a statement of the proposed changes in zoning ordinances and street layouts, an estimate of the cost of acquisition of the area and other costs necessary to prepare it for redevelopment and a statement of such continuing controls as may be deemed necessary to accomplish the purposes of the act."

All this has been done by the defendants.

The plaintiff further complains that some of this data was acquired three years ago, which is another indication that this project has not been a mushroom development but has been under consideration for a long time.

We all know that the Point development has been a matter of earnest investigation and public discussion by not only citizens of this community, but in magazines and periodicals throughout the whole United States, and has perhaps attracted more favorable consideration and approval than any other project that has been undertaken in this community for many years.

The plaintiff also complains that the act of eminent domain is intended to be used in this redevelopment proceeding for purely esthetic purpose and has been mentioned the

fact that it is proposed to plant grass and shrubs on a part of this project. While it is true that the act of eminent domain cannot be employed for esthetic purpose primarily, yet we do not believe that where three skyscraper office buildings are to be constructed, involving a cost of approximately Fifty Million Dollars, the right of eminent domain is defeated merely because it is proposed to plant grass, flowers and shubbery and thereby beautify the surroundings.

The plaintiff further complains that no standards have been adopted to guide the authorities in this redevelopment program and that the lack of adequate standards results in this improvement amounting to a delegation of legislative power contrary to the provisions of the Federal constitution. If there is any validity in this complaint, it relates we think back to the Redevelopment Act itself. The Act of May 28, 1945 P. L. 991 fixes the standards, which it seeks to have maintained and in Section 2 sub-paragraph (a) says:

> "(a) That there exist in urban communities in this Commonwealth areas which have become *blighted* because of the unsafe, unsanitary, inadequate or overcrowded conditions of the dwellings therein or because of inadequate planning of the area, or excessive land coverage by the buildings thereon, or the lack of proper light and air and open space or because of the defective design and arrangement of the buildings thereon or faulty street or lot layout, or economically or *socially undesirable land uses.*" (Italics supplied.)

May we again point to the opinion by Mr. Justice Stern in Belovsky *v.* Redevelopment Authority, supra, at page 342:

> "All that the legislature could do, therefore, was to prescribe general rules and reasonably definite standards leaving to the local authorities the preparation of the plans and specifications best adapted to accomplish in each instance the desired result, a function which obviously can be performed only be administrative bodies."

We think that the constitutional objections raised either with respect to the constitution of the United States or the constitution of the State of Pennsylvania by the plaintiff in Paragraphs 20 to 27 inclusive have already been adjudicated by the Supreme Court in the cases, which we have cited. It might be appropriate at this point to repeat what Mr. Justice Stern so aptly said in Belovsky v. Redevelopment Authority, supra at page 341:

> "As is not unsual when the constitutionality of an important statute is assailed, attacks are here made upon alleged violations of a considerable number of constitutional provisions, possibly in the hope that a stray shot may find its way to some vital target."

We have been advised in the oral argument of this case that the time is running out on this improvement and that unless all the properties necessary to be included in the redevelopment area are secured before June 1, 1950, the parties to the contract between the Urban Redevelopment Authority and The Equitable Life Assurance Society of the United States are in danger of cancellation. It might be mentioned in this connection that the plaintiff here has possibly not been as diligent in the assertion of its rights as the circumstances require. A public hearing regarding the approval of this whole project after due advertisement was held on January 3, 1950. The plaintiff did not see fit to appear at this hearing.

In Schenck v. Pittsburgh, supra, the Supreme Court heard the oral argument on January 5, 1950 and handed down its decision on January 11, 1950. The opinion of the court calls attention to the fact that other property owners on both Penn Avenue and Liberty Avenue sought and were permitted to intervene and be heard in this case, but the plaintiff remained silent on that occasion and has waited until the whole important improvement project has reached a critical stage in its life in order to file its Bill of Complaint.

Of course, we fully realize that private citizens are entitled to be protected against arbitrary and illegal acts of Government authorities, and it is one of the functions of

this court to see that adequate protection is given under such circumstances, and it should be noted that all parties, whose properties are taken, injured or destroyed by this redevelopment are guaranteed under the constitution full, fair and adequate compensation and an opportunity to be heard before a Board of Viewers and by a jury trial in this court and to be heard by the appropriate appellate courts.

The question now involved, we think, has been exhaustively considered by our courts. A time comes when there must be an end to litigation and we venture to suggest that that time has come in this case and we requote the closing words of Mr. Justice Stern in Schenck *v.* Pittsburgh et al, supra, page 39:

> "Our conclusion is that there is no feature of this redevelopment project, of the proceedings taken to effectuate it, or of the contract by which it is to be accomplished, *that is violative of the Constitution or the Urban Redevelopment Law*, and that therefore plaintiff and intervening plaintiffs are not entitled to the injunction which they seek." (Italics supplied.)

It is our understanding that the plaintiff does not urge us to take away "one jot or one tittle" from the opinions of the Supreme Court in the Redevelopment cases, which we have cited. Since the Legislature with the approval of the Governor has committed to certain administrative authorities the finding of certain facts, which involve an immense amount of detail and the Supreme Court has said that "it is for that agency, and not for the courts to determine whether or not the power should be exercised in this particular instance" and that this responsibility *"is not a judicial one at least in the absence of fraud or palpable bad faith"*, we are all of the opinion that the record in this case leaves us no option but to dismiss the Bill. (Underscoring supplied.)

We trust that we may not be charged with going somewhat outside of the present record if we call attention to the fact that probably the most important historical spot in the whole development of this country is a little plot of ground

at the junction of the Allegheny and Monongahela Rivers, which has played such an important and vital part in American history. Historians have written of this, but the country and even our own city has heretofore taken but little notice of it. We are to have a National Park, which is a part of this development and reconstruction project, which has been accompanied by a development in the City of Pittsburgh and surroundings in the extension of our steel industry. Several new industries will soon begin operations in this locality. Also under construction are elaborate and expensive office buildings to accommodate our largest bank and the United States Steel Corporation, the building of a structure of new design by the Aluminum Company of America on Sixth Avenue, and the formation of a Public Park in the intervening space underlaid with a parking garage, as well as numerous other large structures, which together constitute the greatest development in this community in the lifetime of any of us.

A careful and complete review of the plaintiff's Bill with its exhibits does not disclose a legal right to proceed further with this action.

We fully recognize the hardships and inconvenience imposed upon this plaintiff and the remaining property owners within the condemned area as a result of the defendants' comprehensive construction plans in accordance with the Urban Redevelopment Law, but such individual or personal inconvenience must yield to the ever growing social and economic progress of the greater Pittsburgh community.

The Bill will, therefore, be dismissed.

Order of Court

And Now, to wit Apr. 22, 1950, the Bill of Complaint is dismissed at the costs of the plaintiff.

By the Court, T. W. and O'B

Eo die, exception noted to plaintiff and bill of exception sealed.

By the Court, T. W. and O'B

Office - Supreme Court
FILED
JUN 28 1950
CHARLES ELMORE CROP
CLE

IN THE

Supreme Court of the United States

No. 157

JAYNE L. BURT,

Plaintiff-Appellant,

vs.

CITY OF PITTSBURGH, a Municipal Corporation, URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH, a body public, corporate and politic, and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a business corporation,

Defendants-Appellees.

PLAINTIFF'S REPLY BRIEF TO DEFENDANTS' MOTION TO AFFIRM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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B. The city planning commission's finding or certification of "blight" in this case is arbitrary and capricious and without basis in fact or law 23

C. The defendants, Urban Redevelopment Authority of Pittsburgh and the Equitable Life Assurance Society of the United States have contracted in violation of the provisions of the Urban Redevelopment Law and even have wholly ignored the "certification of blight" of the city planning commission. 25

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II.

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IN THE

Supreme Court of the United States

No. .....

JAYNE L. BURT,

Plaintiff-Appellant,

vs.

CITY OF PITTSBURGH, a Municipal Corporation, URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH, a body public, corporate and politic, and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a business corporation,

Defendants-Appellees.

Plaintiff's Reply Brief to Defendants' Motion to Affirm Order of the United States District Court for the Western District of Pennsylvania.

Supplementing Plaintiff's jurisdictional statement as heretofore filed, and with the intent to effectively controvert the statements and arguments made in Defendants' motion to affirm, Plaintiff respectfully submits the following Brief for the Court's consideration.

The Proceedings, Order and Opinion Below.

Plaintiff filed her civil action in the District Court of the United States for the Western District of Pennsylvania to

restrain and enjoin threatened condemnation of her land situate at 424-426 Penn Ave. Pgh. Pa. alleging the unconstitutionality under the Constitution of the United States, of the Urban Redevelopment Law of Pennsylvania, Act of 1945, May 24, P. L. 991, Purdon Pa. Stat. Ann. Title 35, Sections 1701 *et seq.*, and the unconstitutionality of the administration of said Act as applied in this case. Defendants thereupon filed their Motion to Dismiss the Complaint by reason of Plaintiff's alleged failure to state a claim upon which relief could be granted.

In accordance with the provisions of Title 28 U.S.C.A., Sections 2281, 2284, the Motion was heard before a specially convoked District Court composed of one Circuit Judge and two District Judges. This Court was called by Burns, J., only after preliminary argument on and refusal of Defendants' Motion to Dismiss by Judge Burns. The three Judge Court, after argument, entered an Order granting Defendants' Motion and dismissing the Complaint. The Opinion of the Court, which included an Order dismissing the Complaint, is not yet officially reported, having been filed on April 25, 1950, and Defendants have attached to their Motion to Affirm, as Appendix A, the full text of the opinion.

Jurisdiction of this Court.

The statutory provision sustaining the jurisdiction of this Court has heretofore been set forth in full in Plaintiff's jurisdictional statement filed with its Appeal. Briefly stated, this Appeal is prosecuted from a final Order of a District Court of the United States, convened specially as a "3-Judge Court" under the provisions of Title 28 U.S.C. A. Section 2281, which Court dismissed Plaintiff's Com-

plaint and denied Plaintiff either a temporary restraining Order or an interlocutory injunction for any of the reasons set forth in the allegations and prayer of said Complaint. Plaintiff, in her Complaint, had sought to test the constitutionality of said law; the constitutionality of the administration thereof; and judicial review of the conduct and findings of the City Planning Commission of the City of Pittsburgh in certifying an area in said City, including Plaintiff's property, as "blighted" under the provisions of the Urban Redevelopment Law of the Commonwealth of Pennsylvania, Act of 1945, P. L. 991, Title 35 Purdon, Pa. Stat. Ann. Sections 1701 *et seq.;* and had sought both a temporary Restraining Order, pending hearing on the merits of the allegations of Plaintiff's Complaint, and an Interlocutory Injunction against Defendants to prevent them from taking Plaintiff's property under the power of eminent domain as granted in said legislation. The dismissal of Plaintiff's Complaint by the Court below was not based upon any ground of or finding of lack of jurisdiction of such Court over the subject matter of the issues raised in Plaintiff's Complaint under Title 28, U.S.C.A. Sections 2281 *et seq.*

The Statutes providing for appeal and establishing jurisdiction, in this case are as follows:

a. Title 28 U.S.C.A. Section 1253.
b. Title 28 U.S.C.A. Section 2281.
c. Title 28 U.S.C.A. Section 2101 (b).

The jurisdiction of the Court to hear this appeal from the Order of the District Court below is not questioned in Defendant's motion to affirm.

Statement of the Matter Involved.

The Urban Redevelopment Law of Pennsylvania, *supra*, became effective in the year 1945. Purportedly acting under the provisions of that Act, the relevant provisions which are set forth both in Plaintiff's jurisdictional statement (pages 6, 7, 8, 9, 10 thereof) and Defendants' Motion to Affirm, (pages 2, 3, 4 thereof), the City Planning Commission of Defendant, City of Pittsburgh, on March 25, 1947, certified an area consisting of twenty-three (23) acres in downtown Pittsburgh as being a "blighted area" under the terms of said Urban Redevelopment Law. Having declared this area as "blighted", (which area included Plaintiff-Appellant's property, a two story brick commercial building situate on Penn Avenue, Pittsburgh, as aforesaid), a redevelopment proposal was drafted by the Urban Redevelopment Authority and submitted to the City Planning Commission for approval under the provisions of Section 10 of said law, same being cited as Note 2 (pages 8, 9 and 10 of Plaintiff's jurisdictional statement). The redevelopment proposal for the twenty-three (23) acre tract having been approved by the City Planning Commission, Defendant, Urban Redevelopment Authority of Pittsburgh, procured tentative consent of Defendant, The Equitable Life Assurance Society of the United States to become the Redeveloper of the twenty-three (23) acre tract. As a legislative prerequisite to carrying into effect any of the redevelopment proposals (Section 10 (i) of the Urban Redevelopment Law, *supra*,) it was necessary to secure the approval of the Council of the City of Pittsburgh, by Resolution, of the redevelopment proposal. Without such Councilmanic approval the entire project would have expired by virtue of the Statutory requirement of such consent. On January 27, 1950, such approval was secured

through the passage by the Pittsburgh City Council of an Ordinance accepting the redevelopment proposal. Thereafter, on February 14, 1950, Defendant, Urban Redevelopment Authority of Pittsburgh and Defendants, The Equitable Life Assurance Society of the United States, entered into a redevelopment contract which is attached as an exhibit to Plaintiff-Appellant's Complaint as Exhibit B to Exhibit 1 (Complaint 50 a-72 a incl.). Under the terms of said contract, using only money of Defendant, The Equitable Life Assurance Society of the United States, the Defendant Authority was obliged to acquire title to the twenty-three (23) acre tract by eminent domain, if not otherwise, and, at Defendant, Equitable's request, convey the title so acquired to Equitable. Thereafter, Defendant, The Equitable Life Assurance Society of the United States, as the sole owner of said property, and with the right to the use of said property exclusive of anyone else, and with the right to deny access to said property to any but its invitees, was obligated as to approximately one and one-half (1½) blocks of the nine (9) block area to erect three (3) eighteen (18) story office buildings for its own use and private benefit, to furnish heating and covered parking space for 150 cars, and to plant the remainder of the 1½ block area with grass and shrubs, using some undescribed portion thereof for off-street parking for private invitees cars. As to the remaining 7½ blocks in the 9 block, 23 acre, area, there was no obligation on Equitable's part to do anything if it did not desire to do so. If it did not request conveyance to it, as permitted by the contract, of said remaining approximately seven and one-half (7½) block area, the Defendant, Urban Redevelopment Authority's only recourse was to attempt to secure another redeveloper at the end of a four year period.

Within a sixty (60) day period after the redevelopment contract was entered into, and within sixty-eight (68) days of the time the redevelopment proposal was accepted by the Council of the City of Pittsburgh, without which consent neither the proposal nor the contract could have become effective, viz. on April 5, 1950, Plaintiff filed her civil proceeding in the District Court of the United States seeking a temporary restraining Order to prevent Defendants from proceeding to take her property and seeking an interlocutory injunction to prevent such seizure. Defendants have stated in their Motion to Affirm (page 8) that on April 5, 1950, Defendant, Authority, had already condemned part of the property within the area, but this is a misstatement in as much as Plaintiff presented her Complaint to the Federal District Court on the same day, and at the same time that Defendant, Urban Redevelopment Authority was presenting its first condemnation proceeding Bonds in the Court of Common Pleas of Allegheny County, Pennsylvania, the presentation of such Bonds being the initial step, under Pennsylvania law, in the condemnation of property under the exercise of the power of eminent domain. Defendants have further, in their motion to affirm, (page 8) mistakenly stated that Plaintiff failed to utilize her opportunity to be heard at the public hearing on the project before the City Council, in as much as several property owners appeared at the purported public hearing and were given no chance to be heard by the City Council.

In her Complaint, as filed with the District Court of the United States for the Western District of Pennsylvania, on April 5, 1950, (Complaint, pages 1-20 incl.) Plaintiff, in essence, averred:

a. That her land was located within the area certified as "blighted".

b. That the matters involved in her suit arose under the provisions of the Constitution and the Amendments thereto of the United States of America.

c. That the lands and buildings in said area purportedly blighted had a fair market value of Twenty Million Dollars.

d. That City Council of the City of Pittsburgh had approved the redevelopment proposal by Ordinance No. 4 on January 27, 1950, a copy of said Ordinance being attached to the Complaint and marked as Exhibit 3 (Complaint 88 a, 90 a incl.).

e. That having performed the foregoing procedural steps and others recited in said Complaint, Defendant, Authority intended, through condemnation, to procure title to and possession of Plaintiff's land through use of private money of the Redeveloper, The Equitable Life Assurance Society of the United States; that thereafter the Defendant, Authority intended immediately to convey Plaintiff's property to the Redeveloper for the Redeveloper's immediate private purpose and private gain, all of this to be done before physical rehabilitation or rebuilding of any kind was initiated, and prior to the accomplishing of any removal of the purported blight in the area; and that such proposed taking constituted an unconstitutional use for private purposes of the power of eminent domain.

f. That the certification of the City Planning Commission that said land was a blighted area was a certification wholly arbitrary, capricious and without basis in fact or law, the reasons therefore being stated in the Complaint. Plaintiff further averred that the area certified as blighted by the City Planning Commission was not in fact blighted within the provisions

of Section 2 (a) of the Urban Redevelopment Law, *supra*, specifically denying in the very terms of the Statute that any of the grounds upon which blight was, under the terms of the Act, to be determined, existed in the area involved.

g. That the said Urban Redevelopment Law and the proceedings taken thereunder were, in relation to Plaintiff, violative of the due process and equal protection clauses of the 14th Amendment of the Constitution of the United States in as much as their effect was to deprive Plaintiff of her property without due process of law, without the equal protection of the laws, and constituted under the facts, a taking by a body public, Defendant Authority, solely for the benefit of a private business corporation, The Equitable Life Assurance Society of the United States. Plaintiff specifically asserted in paragraph 22 of her Complaint, that the proposed use of the land to be condemned, including Plaintiff's land, would be of great value and benefit to said Redeveloper, a private business corporation, but would be of no benefit to the public at large or to the public within said area.

Summarizing the contents of the Complaint, the following questions are therein specifically raised:

a. The federal constitutionality of the Urban Redevelopment Law of Pennsylvania.

b. The federal constitutionality of the administration of said Urban Redevelopment Law of Pennsylvania as applied to the taking of the Plaintiff's property.

c. The right of Plaintiff to have judicial review, by the Federal Courts, of the City Planning Commission's determination of blight, where Plaintiff specifically de-

nied, in the very terms of the Act involved, that any of the factors specified by said Act as constituting blight existed in the area proposed to be taken, and that the action of the City Planning Commission, despite this, in officially declaring said area as blighted, was an arbitrary and capricious act without basis in fact or law.

None of the Defendants filed an answer on the merits to Plaintiff's Complaint, rather, all joined in a motion to dismiss the Complaint, thus admitting all of the allegations well pleaded by Plaintiff in her Complaint.

Despite Defendants' procedural admission of Plaintiff's allegations or arbitrariness and capriciousness, and notwithstanding Plaintiff's allegations as to the unconstitutionality of the Urban Redevelopment Law and its administration as applied to this case, the three Judge District Court, after hearing Defendants' Motion to Dismiss the Complaint and Plaintiff's Arguments to the contrary, immediately after oral argument, and without testimony, dismissed the Complaint in an Opinion and Order filed within three (3) hours after conclusion of the argument. It is from this Opinion and Order that Plaintiff's Appeal has been taken.

Assignment of Errors.

The following assignment of errors has heretofore been duly filed by Plaintiff in this action, asserting that the court erred:

1. In granting the Defendants' Motion to Dismiss the Complaint.

2. In granting the Defendants' Motion to Dismiss the Complaint based upon a holding that the Supreme Court of Pennsylvania in the case of Belovsky, Appellant, vs. Redevelopment Authority of Philadelphia,